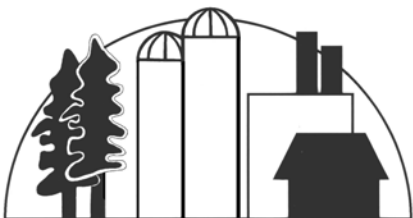


Plan Commission Handbook



May 2002



Center *for* Land Use Education

The College of Natural Resources and Cooperative Extension
University of Wisconsin – Stevens Point

This handbook has been prepared by Michael Dresen, Anna Haines, Lynn Markham, Merritt Bussiere, and Glenn Bowles, of the *Center for Land Use Education*. The Center is a joint venture of the College of Natural Resources at the University of Wisconsin-Stevens Point and University of Wisconsin Cooperative Extension. Financial assistance was provided by the Dam Safety, Floodplain, and Shoreland Management Section of the Wisconsin Department of Natural Resources, Bureau of Watershed Management.

Thanks to the following reviewers for their helpful suggestions:

- Fred Scharnke and Denise McShane, East Central Wisconsin Regional Planning Commission
- Carmen Wagner and Shannon Fenner, Wisconsin Department of Natural Resources

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Center for Land Use Education
University of Wisconsin - Stevens Point
College of Natural Resources
1900 Franklin Street
Stevens Point, WI 54481
Phone: 715-346-3783
Fax: 715-346-4038
E-mail: landcenter@uwsp.edu

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Table of Contents

Introduction	4
Getting Started as a Plan Commissioner	5
Plan Commission Basics	8
Roles of a Plan Commission	8
Establishing a Plan Commission: Authority and Procedure.....	21
Who Do Plan Commissions Work With?	24
Public Participation	27
Public Meetings and Hearings	31
Public Relations	31
Making Decisions	33
Conflicts of Interest, Voting and Open Records Law.....	34
Open Meetings and Public Notification.....	36
Conducting Meetings.....	40
Notification of Public Hearings	42
Conducting Public Hearings	44
Appealing Plan Commission Decisions	48
Citizen Advisory Committees	50
Planning	53
Benefits of Community Planning	53
Basic Planning Process	56
The Plan for Planning	58
Plan Implementation Tools	67
Resources for Plan Commissioners.....	79
Publications.....	79
Websites.....	80
Endnotes	82

Introduction

Cities, villages, and towns in Wisconsin are authorized by state statutes to establish a plan commission. Counties create bodies with similar functions that go by a wide variety of names such as “planning and zoning committee” and commonly include in their name other functions for which they are responsible (parks, solid waste management, economic development, land records, etc.). This handbook will use “plan commission” to refer to all such bodies noting differences in authority or practice where appropriate.

This handbook has two goals. The first is to assist plan commission members in understanding their various roles and related practices and law. Secondly, the handbook is intended to help local government officials and citizens understand the role of the commission and their relationship to it.

In general, plan commissions **advise** their local governing body on comprehensive planning and land use issues and may make related decisions that are delegated by the governing body. A primary role of the commission is to prepare and administer a comprehensive plan, providing leadership and insight into opportunities and challenges that confront the community. To help with these responsibilities, the handbook will focus on four main areas:

- Plan Commission Basics
- Planning
- Plan Implementation
- Resources for Plan Commissioners

Getting Started as a Plan Commissioner

This section provides a brief overview of the entire handbook to help you understand the role and duties of the plan commission and its relationship to other local government bodies and officials.

What is planning all about?

As a process, planning strives for an orderly, open approach to determining community needs, setting goals and priorities, and developing a guide for local government decisions and the future development of the area. Planning includes the economic, social and cultural interests in the community and people from all walks of life. Planning is also place-based in that the process strives to build on the unique qualities of a community. Planning produces a document, a plan, that should be used by the plan commission, public officials and private citizens to make informed decisions about the future of their community including where to locate new roads, houses, businesses, schools and public buildings and by private citizens in making decisions about where to live or work or how to develop their property.

What is the role of the plan commission in the planning process?

In general, plan commissions **advise** their local governing body on comprehensive planning and land use issues and may make related decisions that are delegated by the governing body. A primary role of the commission is to prepare and assist the governing body in implementation of a comprehensive plan, providing leadership and insight into opportunities and challenges that confront the community.

What decisions does a plan commission have the legal authority to make?

Plan commissions are involved in three types of governmental decision-making, described in detail starting on page 8:

1. Legislative decisions - recommending actions to the governing body regarding adopting or amending plans, ordinances or other implementation tools
2. Quasi-judicial decisions - applying local ordinances to make decisions regarding zoning conditional use permits, plat approvals and administrative appeals and variances for specified ordinances
3. Administrative decisions – issuing permits or making personnel or other management decisions

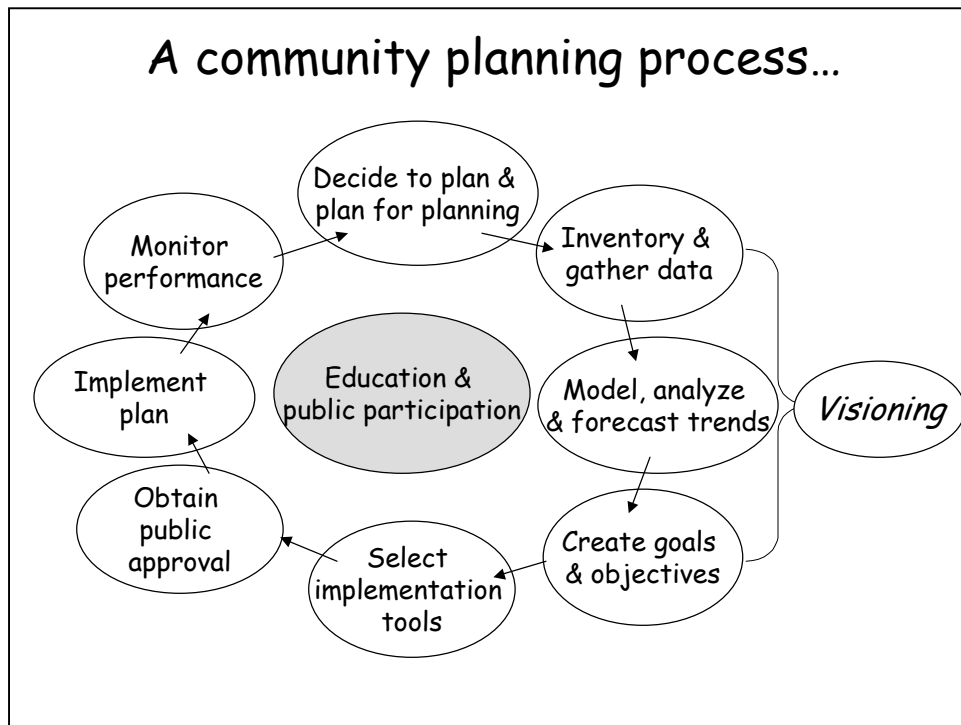
What legal requirements does a plan commission need to follow?

To avoid legal difficulties and ensure an open process and fair decisions, a plan commission must abide by the requirements of:

- Open meetings law (see page 36)
- Open records law (see page 34)
- Voting requirements (see page 34)
- Conflict of interest laws (see page 34)
- Public notification requirements for meetings and hearings (see pages 36 and 42)

How do you develop the plan?

Once a plan commission is established and its members appointed, one of the first big questions concerning the comprehensive plan is “How do we get started?” Because the plan commission is charged with the responsibility to prepare the comprehensive plan and most plan commission members are not planners and have little knowledge of planning per se, guiding a planning process and preparing a comprehensive plan can seem a daunting task. One important tip is to separate the planning process into feasible steps, illustrated below. The first and, in some respects, the most important step actually has two parts: 1) deciding to plan based on recognition among elected officials and the public that planning is beneficial and 2) designing a planning process based on the general steps below that is best suited to the capacity and priorities of your community, described on page 58. The subsequent steps are important as well, but once the public and elected officials understand the benefits and value of planning and have agreed to a process to prepare a plan, it will make the other steps far easier to carry out.



Who does the plan commission work with?

To get its work done, a plan commission depends on good relations with many people, described further on page 24, including:

- Town Board, Village Board, City Council, County Board for political support in the adoption of the plan and implementing programs
- Citizens for their perspectives and opinions during plan development, for understanding and abiding by the plan and suggesting revisions when needed
- Planning advisory committee
- Developers and builders
- Planning staff
- Municipal clerk/administrator
- Attorneys

- Regional planning commissions
- The media
- Nearby communities
- Cooperative Extension educators

How do you implement the plan?

Effective community planning involves multiple tools, coordinated administration, and consistent application and enforcement of programs. All implementation tools must have a common grounding in the plan and must be consistent with the appropriate portions of the plan. Plan implementation tools described briefly in this handbook, starting on page 67, include:

- Zoning ordinances
- Land division ordinances
- Official maps
- Local building codes
- Capital improvement programs
- Site plan review
- Design review
- Fiscal impact analysis
- Purchase of development rights
- Transfer of development rights

Where Can I Learn More?

Now that you have some familiarity with the role of the plan commission, please use this handbook as a reference to assist in the planning process. It can guide you in the conduct of public meetings and hearings and in making decisions under local land use ordinances and other programs. A listing of additional resources for plan commissioners begins on page 79.

Plan Commission Basics

Roles of a Plan Commission

Plan commissions are involved in three types of governmental decision-making:

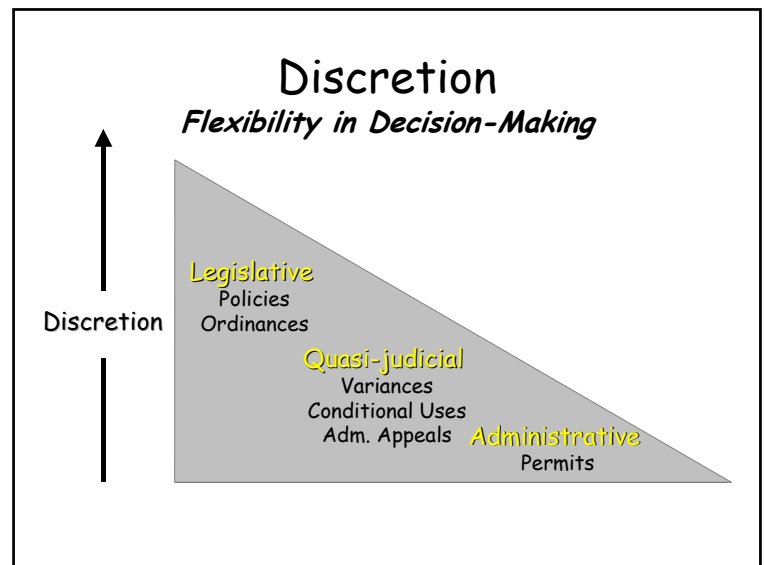
1. Legislative decisions (recommendations by the commission for legislative action by the governing body),
2. Quasi-judicial decisions (application of local ordinances where decision-making authority has been delegated to the commission by the governing body); and
3. Administrative (or ministerial) decisions (where individual commissioners may perform functions of an administrative official).

The distinction is important because the type of decision determines:

- the rules that apply to the decision-making process and
- the degree of discretion available to decision-makers.

Generally, plan commissioners have the greatest degree of discretion when recommending legislative action and the least discretion when making administrative decisions.

Types of decisions, rules for decision-making and roles and duties of commissioners are outlined in the following sections.



1. Legislative functions - Planning and policy making

Local planning policy development

Adoption of a community comprehensive plan, and adoption of zoning, development standards and many other plan implementation tools are legislative functions reserved by state law for the local governing body. Statutes and local rules assign specific roles in the adoption process to the plan commission. These typically include identification of priority issues, development of a proposed community plan, drafting implementing ordinances or amendments, some public airing of proposals (usually by public notice and hearing) and forwarding recommendations to the governing body. In larger communities the commission has professional staff to assist in its duties but smaller communities must rely on their commissioners or cooperate with neighboring communities. Many communities commonly work with state or federal agencies or contract with private consultants or their regional

planning commission to develop plans and implementing strategies. Commission functions are subject to the budgetary and policy restrictions imposed by the governing body. University Extension and the State Office of Land Information Services have prepared materials to assist communities in hiring a planning consultant (see page 79 for a list of resources for plan commissioners including *How to Hire a Planning Consultant*). County Extension educators also advise communities regarding preparation of state planning grant applications (as do consultants) or requests for consultant services.

Although the commission does not actually adopt community plans or implementing legislation but only recommends them to the governing body, its role is, nonetheless, important. Because issues that confront local government are so varied and complex, local elected officials often rely heavily on the commission and give significant deference to its recommendations in matters related to its duties. This deference carries with it responsibilities to include the whole community in planning, to carefully consider decisions and to constantly improve members' knowledge and skills regarding commission functions. Where a plan commission includes both elected officials and citizen members, elected officials can maintain communication and relationships with the local governing body while citizen members provide time, energy, expertise and a diversity of viewpoints that may not be available among elected officials.

Public participation in planning and legislation

Adoption of plans, ordinances and other legislative proposals related to land development standards are generally subject to intense public scrutiny because they may affect personal wealth, property rights and other values that Americans cherish. Our democratic system of government encourages public discussion of pending legislation. It is perfectly acceptable for individual citizens as well as economic, environmental, social and other interests to lobby legislators for support or opposition to particular local legislative proposals in public or in private. However, once proposed policies (such as development standards or zoning) are adopted and become law, government bodies such as the plan commission must apply them in full view of the public and media following legal rules of fair play (known as due process).

Providing meaningful opportunities for public involvement in the planning process and in adoption of implementing policies and programs is an important role of the commission. Members should acquire some familiarity with a number of public participation mechanisms described in the *Public Participation* section starting on page 27. University Extension educators in county offices are a valuable source of information regarding this topic. Public involvement will help the commission to:

- identify issues of concern to the community,
- engage affected parties in research and development of proposals,
- assess the impacts of proposals on affected parties,
- judge political acceptability of proposals, and
- garner political support for proposals in the legislative process.

An educational role

Commission members must educate themselves regarding their various roles and the issues that confront them. Perhaps less obvious is the role of the commission in promoting education of the community regarding issues that affect its economic,

social and physical well-being. Developing a well-conceived and adequately funded public education program regarding economic, environmental and social threats and opportunities confronting the community and descriptions of alternative strategies for dealing with them is an important commission function. When a community plan and implementing programs are adopted, similar educational efforts directed at the public and the development community are needed to explain the plan and its requirements.

Administration of zoning and other plan implementation tools

The plan commission plays an important role in adoption and administration of zoning ordinances and land division and development standards. The commission may recommend changes (amendments) to an official zoning map to modify district boundaries or create new districts or it may recommend modifications to ordinance text to change the uses permitted in a district or the regulations that apply to particular activities. In Wisconsin, these amendments are regarded as legislative acts. They generally result from:

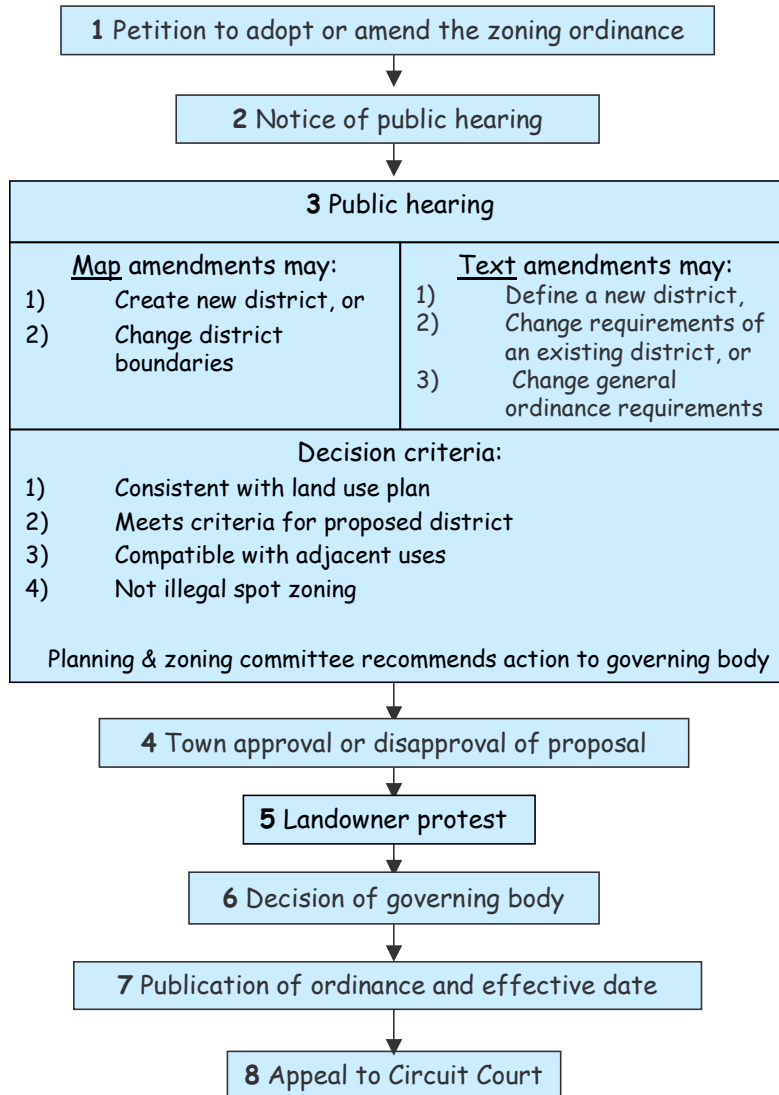
- landowner requests to do something other than what is permitted in a zoning district,
- new information about or changed social, economic or environmental conditions posing new threats or opportunities for the community,
- preparation of a revised land use plan, or
- lack of political support for current land use policies.

Zoning is an approach to land use plan implementation that attempts to match land characteristics with compatible types of development and to spatially separate types of development that conflict with one another. For example, mapping of an exclusive agricultural zoning district might be based on presence of productive soils, proximity to facilities for farm implement repair and sources of seed and agrichemicals and absence of retail or residential development that would conflict with farm activities (odor, machinery noise, dust, etc.) Each zoning district is assigned compatible permitted and conditional uses based on such criteria. These criteria guide the plan commission in making recommendations to the governing body regarding rezoning petitions (map amendments) unless the land use plan is changed or new criteria for describing zoning districts are developed. Small parcel rezoning, sometimes known as *spot zoning*, is often controversial because it may allow uses that are incompatible with the physical limitations of a site or with uses of surrounding properties. Spot zoning is not always illegal. It may be approved where it is in the public interest and not solely for the benefit of the property owner requesting the rezoning. Spot zoning may be successfully challenged in court where it does not meet these criteria and results in a small uniquely zoned island at odds with ordinance and plan objectives.¹

Process for Adopting or Amending a Zoning Ordinance

Petitions for adoption or amendment of a zoning ordinance must be referred to the plan commission for public notice, a hearing and a commission recommendation to the local governing body (county board, city council, village or town board). The following chart and text describe the county process which is slightly different than for cities, villages and towns.²

Process for Adopting or Amending a County Ordinance



1 Petition to adopt or amend the zoning ordinance

County – A petition may be filed by:

- a property owner in area to be affected by the amendment,
- a town board where the ordinance is in effect,
- a member of county board, or
- the planning and zoning committee/commission.³

City, Village or Town – Statutes do not specify who can petition for an amendment.

2 Notice of public hearing

Counties, cities, villages and towns are required to provide a class 2 notice⁴ of a public hearing to consider zoning ordinance amendment. Counties must also provide notice to affected towns and municipalities.⁵ Notification for public hearings is discussed further on page 42.

3 Public hearing

County – The public hearing is held by the planning and zoning committee.⁶

City, Village or Town – The governing body chooses one of the following bodies to hold the public hearing and make a recommendation regarding the petition:

- governing body,
- plan commission,
- plan committee, or
- board of public land commissioners.⁷

The same body that holds the public hearing then makes a recommendation to the governing body whether to adopt or amend the ordinance.

Ordinance amendments:

- *Map amendments* create a new district or change the boundaries of an existing district.
- *Text amendments* create a new district or change district or general development standards.

The following criteria should guide decisions about ordinance amendments:

- *Consistency with community land use plan.*
- *Consistency with zoning district mapping criteria.* Environmental suitability for intended use, including soils, septic suitability, proximity to wetlands and adjacent waters.
- *Compatibility with adjacent uses.* To avoid conflicts with neighbors such as noise, litter, lighting, aesthetics, construction site erosion and stormwater runoff and proximity to required services or infrastructure.
- *Avoidance of inappropriate spot zoning.*

4 Town approval or disapproval of zoning ordinance adoption or amendment

County – There are time limits on town approval or disapproval.⁸ A general county zoning ordinance is not effective in a town until it is approved by the town board.⁹ Similarly, comprehensive revisions to county zoning ordinances do not apply in a town unless approved by the town board.¹⁰

Generally, a town board that has approved a county comprehensive zoning ordinance can prevent an ordinance amendment that only affects that town by filing a resolution stating disapproval within the time limit. A town that has approved a county comprehensive zoning ordinance may petition the county to amend the county ordinance.

City, Village or Town – Not applicable.

Many town boards refer county zoning petitions to their town plan commission but retain authority to make a final town recommendation to the county. This retention of authority by the town board can complicate scheduling of hearings or delay action by the county planning agency to the displeasure of petitioners. Some counties and their towns have agreed on timelines and procedures to expedite forwarding of petitions to towns and return of town recommendations.

5 Landowner protest

If the required number of affected landowners¹¹ file a protest with the municipal clerk opposing a proposed amendment at least 24 hours prior to the date of the meeting of the governing body at which the recommendation of the zoning agency is to be considered, an affirmative vote of three-fourths of the members of the body present and voting is required for approval.

6 Decision of governing body

The governing body may approve, modify or deny an amendment. In the absence of a valid landowner protest, a zoning ordinance may be adopted or amended by:

County - A majority of the board members present unless otherwise provided.¹² If the county board approves or modifies an amendment, then affected towns must approve or disapprove it within specified time limits.¹³

City, Village or Town – A majority of all the members of the council or board.¹⁴

7 Publication of ordinance and effective date

County –

- If a zoning ordinance adoption or amendment applies to only one town, the town may unilaterally approve or disapprove the change.
- If a zoning ordinance adoption or amendment applies to multiple towns, a majority of affected towns must approve or fail to disapprove the changes for them to go into effect.¹⁵
- Adoption or amendment of county shoreland and floodplain ordinances does not depend on town approval or disapproval.¹⁶
- A town board may have up to one year to approve a comprehensive ordinance revision during which time the current zoning remains in effect.¹⁷

Adopted ordinances and amendments must be published as a class 1 notice.¹⁸

8 Appeal to Circuit Court

Judicial review of legislative decisions such as ordinance adoption or amendment generally involves jurisdiction, statutory authority, procedural

issues or constitutionality.¹⁹ Courts generally defer to governmental bodies regarding the content of legislative decisions unless constitutionally protected rights are violated. See *Court Actions* on page 48 for discussion of court review of quasi-judicial decisions of the plan commission.

2. Quasi-judicial functions - Policy implementation (ordinance administration)

The legislative functions of the plan commission generally involve advice to the local governing body on planning matters. However, that body may, subject to statutory limits, delegate final decisions in certain matters to the commission. These typically involve:

- zoning conditional use permits (also known as special exceptions),
- plat approvals (approval of land divisions) and
- administrative appeals and variances for ordinances not adopted under comprehensive zoning authority (e.g. land division).

In such cases the commission applies adopted ordinances (local laws) to particular development proposals. Here it serves a quasi-judicial role (literally *almost like a court*). The discretion and flexibility of the commission is limited by the local ordinance or state laws that provide criteria for specified types of decisions or specific development standards. The commission cannot provide additional relief from regulations unless underlying laws are amended following required procedures.

Due process

Our democratic system encourages wide discussion regarding public policy development and proposed legislation. Once a law is adopted, its application must be open to public scrutiny and conform to legal rules of fair play known as due process. When the commission applies local ordinances to specific development proposals, these quasi-judicial decisions must also conform to the rules:

- giving notice of a pending decision to affected persons,
- providing an opportunity for a hearing,
- providing an opportunity to introduce evidence and examine witnesses,
- basing decisions on pre-existing standards,
- basing decisions on factual evidence in a record that is available for review,
- making written decisions,
- remaining unbiased in their decision-making, and
- providing an opportunity for appeal.

The commission must apply adopted ordinances as they are written and may not substitute its judgment for that of the elected local governing body. The *Zoning Permit Decision Process* diagram in this section describes legislative, quasi-judicial and ministerial functions in land use law administration and distinguishes roles of local government bodies.

Ex parte communication

Commission members should not have conversations or receive correspondence regarding a quasi-judicial matter (application of adopted ordinances in a particular case) that is pending before the commission or which may come before the commission except during the hearing on the matter. Such outside contacts are known as *ex parte communication*. *Ex parte communication* may not be considered

in decision-making unless it is disclosed and made part of the official record in the matter. The commission as a whole can then determine the admissibility of the information and individual members will determine its credibility and weight in deciding their vote on the issue. The reason for exclusion of ex parte information is that parties are entitled to know and examine the source of information used by the commission in its decision-making. Outside discussion regarding procedural matters such as how to file a petition/application or scheduling meetings and hearings is permissible.

Conditional Uses/Special Exceptions

Deciding conditional use permit applications under local zoning ordinances is a major task for most plan commissions. Understanding the concept and consistently applying appropriate standards are critical to land use plan implementation.

Permitted uses and conditional uses for each district. Generally, two categories of land uses are allowed in each zoning district: permitted uses and conditional uses. A permitted use is allowed as a matter of right in all locations in a district provided it complies with general standards for the district, any overlay district or design standards and related building or construction codes. Authorization by the zoning administrator or building inspector is non-discretionary if a project meets the standards. Additional conditions on design or construction may not be imposed. A permitted use is authorized by a simple zoning or building permit.

The terms *special exception* and *conditional use* are used synonymously in Wisconsin.²⁰ Conditional uses are those deemed not suited to all locations in a zoning district but which may be authorized if adaptable to a particular site and adjacent land uses. In short, they must be custom tailored to a specific location. Conditional uses are generally limited to those listed in the local ordinance for each zoning district. They may include both uses of land (e.g., a public safety facility in a residentially zoned area) and specified construction activities (e.g., filling and grading in excess of 10,000 square feet adjacent to water bodies). Review of permit applications may be assigned to the planning and zoning committee/commission, the zoning board of adjustment/appeals or the governing body as determined by the local ordinance. A public notice and hearing are customary (though not required by state law) in order to provide neighbors and the public an opportunity to voice concerns about potential effects of proposed conditional uses. Other due process concerns must also be addressed. The decision to grant or deny a conditional use permit (CUP) is discretionary i.e., a permit may be denied if the project does not comply with the criteria for approval provided in the ordinance.

Standards for approval of conditional uses. General performance standards and/or specific design standards for approval must be provided by ordinance for conditional uses.²¹ An applicant must demonstrate that the proposed project complies with each of the standards. The permit review body may impose additional limitations (conditions) on development to conform the project to standards for approval and ordinance objectives. The review body may require an applicant to develop a construction or facility operation plan consistent with specified performance standards (e.g., meet with land conservation department staff to develop an erosion control plan that contains all runoff/sediment on the site). This approach can achieve a high level of compliance with ordinance objectives if the parties can reach

agreement. Permit conditions that are routinely imposed for similar projects should be adopted by ordinance as additional standards for permit approval. Incorporating such standards in an ordinance allows permit applicants to anticipate and plan for design, location and construction requirements.

TYPES OF DEVELOPMENT STANDARDS

Performance Standard

Example: *Projects may not result in any increase in stormwater discharge which exceeds predevelopment conditions.*

- Features:
- Expected results are stated.
 - Project may be “custom tailored” to the site.
 - Requires more technical expertise to design and evaluate proposal.
 - More complex project monitoring and enforcement.
 - Opportunity for optimal compliance/performance.

Design Standard

Example: *Each lot shall provide 500 cubic feet of stormwater storage.*

- Features:
- Project specifications are stated.
 - Easy to understand, administer and enforce.
 - Little flexibility (many variance requests).
 - May not achieve ordinance objectives in all cases.

Exactions. Exactions are conditions imposed on development that require a developer to dedicate land or provide public improvements (or fees in lieu) in order for a project to be approved. They are not unique to permitting of conditional uses. Exactions and other conditions on development are generally legal and acceptable provided:

- they are designed to remedy a harm to public interests or to address a need for public services that is likely to result from the proposed development (*essential nexus* test)²² and
- the exaction or limitation is commensurate with the extent of the resulting harm or need for services (*rough proportionality* test)²³.

For example, a developer could be required to dedicate 10 acres of parkland if the proposed development created a corresponding demand for recreational facilities in the community. If there were a greater need for recreational facilities, the new development should be responsible for only its proportional share. Exactions cannot be used to remedy existing deficiencies in public infrastructure or services (those that predate an exaction). A community must be able to document that an exaction is reasonable and to that end some local ordinances provide rationale and formulae for computing appropriate exactions and impact fees.²⁴

Continuance of conditional uses. Subsequent owners of a property are entitled to continue a conditional use subject to the limitations imposed in the original permit. This is so because compatibility with site conditions and neighboring land uses, rather than the circumstances of the applicant, determine whether a conditional use can be permitted at a particular location. However, where a new owner changes the use or violates permit conditions, the board may revoke the permit or modify conditions after notice and a hearing. Some commissions require permittees to

report on compliance with permit conditions. Others review compliance during the course of periodic renewal of the permit.²⁵ Affidavits recorded with deeds can give subsequent owners notice of permit conditions they must abide by in order to continue conditional uses. Some communities place time limits on conditional uses where the nature of the activity is temporary (special events or mineral extraction operations).

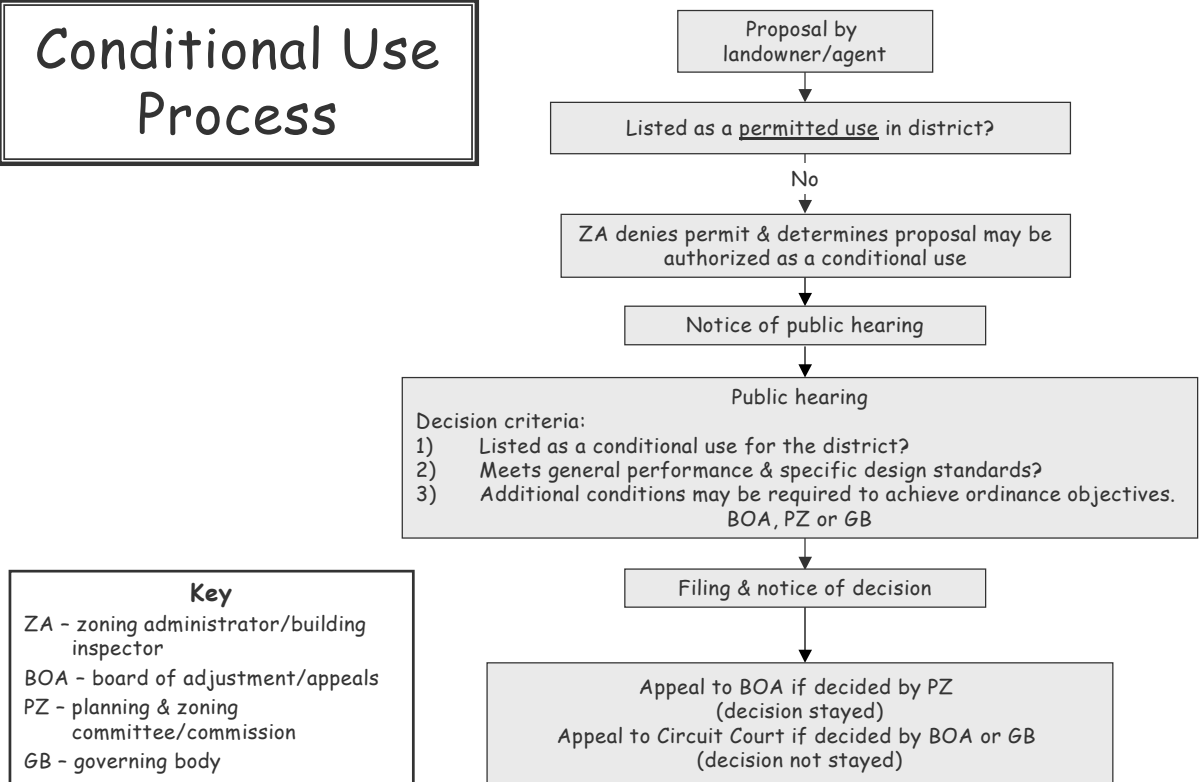
Completion of application prior to hearing. The application for a conditional use permit must be completed by the first time notice is given for the final public hearing on the matter, unless the local ordinance provides otherwise.²⁶ This court ruling assures that citizens will have information necessary to evaluate a proposal and provide testimony at hearing and that controversial information will not be withheld until after the hearing.

Appeal of decisions. Procedures for appeal of conditional use permit decisions vary depending on which body is designated to make the initial decision. Where a county committee makes the initial determination, the board of adjustment hears appeals.²⁷ In a city, village or town with village powers, a commission decision in a quasi-judicial matter may be appealed to either the governing body or the board of appeals as provided by the local ordinance. Appeal of the final local decision is to circuit court. (See *Judicial Appeal of Zoning Board Decisions* in the *Zoning Board Handbook* listed on page 79.)

Role of municipal counsel

Municipal or corporation counsel may advise and represent local officials and bodies (such as the zoning administrator or plan commission) in matters related to their official duties. However, municipal counsel generally represents the interests of the local governing body where positions of local officials and bodies conflict. Since a zoning officer or the zoning committee/commission may contest any zoning board decision, circumstances requiring legal representation for the board should be anticipated and provided for in local rules and policies. For example, the Wisconsin court of appeals has ruled that a village attorney cannot, in a hearing before the zoning board, act as both prosecutor examining witnesses and advisor to the board in its quasi-judicial deliberations.²⁸

Conditional Use Process



3. Administrative functions - Planning department oversight and commissioners as ministerial officials

In some municipalities the plan commission takes an active role in management of the local planning and zoning department and oversight of its personnel. Where this is the case, the commission may administer personnel rules and make other administrative decisions regarding operation of the department. In smaller communities, a commission member may actually perform the duties of a zoning administrator or building inspector by accepting petitions or applications, issuing permits and making inspections. This practice reflects the reality of limited personnel and financial resources in smaller communities. When a commissioner acts in an administrative or ministerial capacity, his/her discretion in decision-making is generally limited to routine interpretation of adopted rules or standards. Rules or standards must be applied in an unbiased manner and decisions may be appealed to the body designated by local ordinance or state stature. In an instance where such a decision may be appealed to the plan commission, the commissioner who made the decision must not sit in review of his own decision (the reason such administrative roles for commissioners are not preferable).

In summary

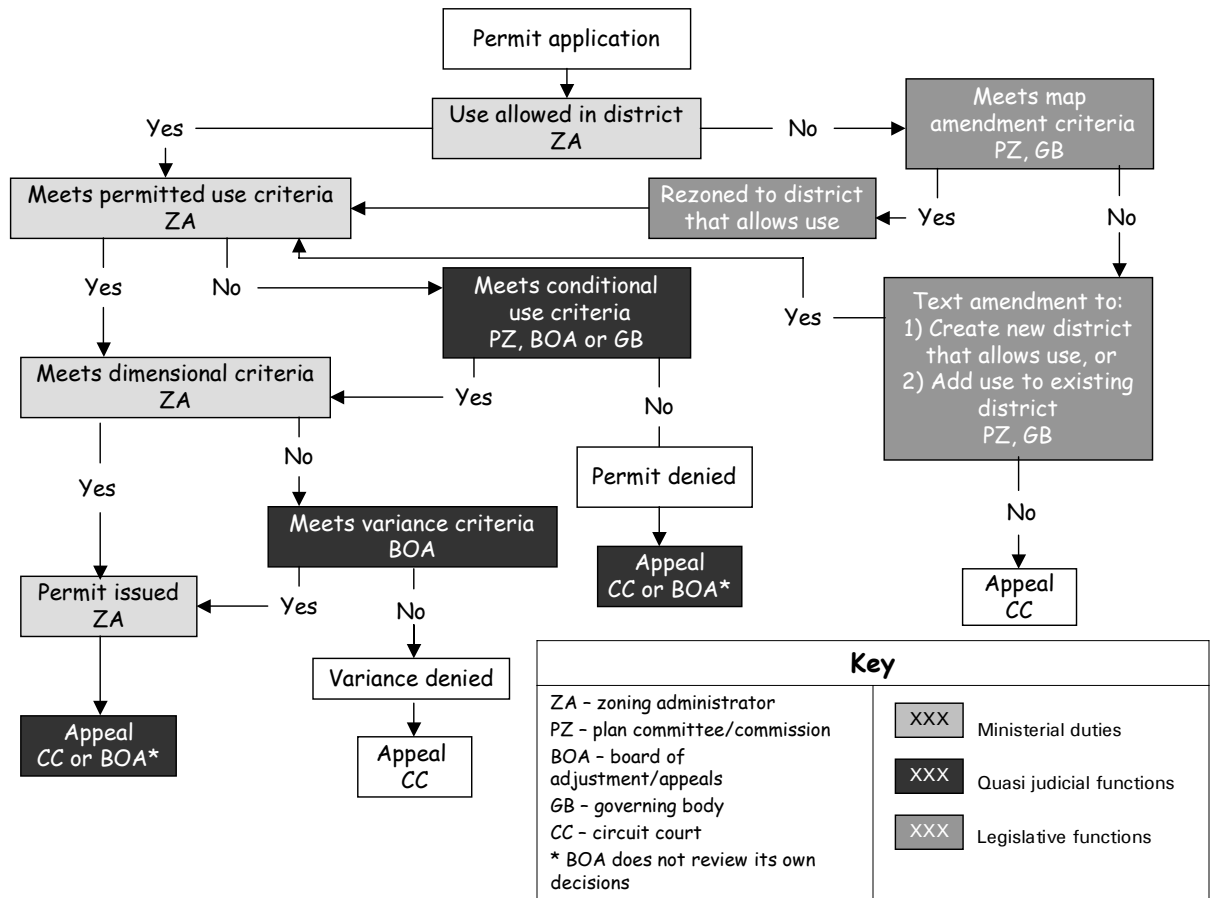
Commissioners have a wide variety of planning and plan implementation functions.

They must distinguish between their roles in order to determine:

- the rules that apply to their decision-making process and
- the degree of discretion available to them.

RULES FOR DECISION-MAKING		
<u>Making Laws</u>	<u>Applying Laws</u>	
Legislative decisions Wide public discussion Wide discretion	Quasi-judicial decisions Due process Limited discretion	Administrative decisions <i>Administrative</i> due process Narrow discretion
1. Decision-makers represent constituents. 2. Public discussion is encouraged. 3. Decisions must be constitutional and reasonable. 4. Land use decisions should be based on a land use plan.	1. Notice of pending decisions. 2. Opportunity for a hearing. 3. Opportunity to introduce evidence & examine witnesses. 4. Decisions based on pre-existing standards. 5. Decisions based on factual evidence in a reviewable record. 6. Written decisions. 7. Unbiased decision-makers. 8. Opportunity for appeal.	1. Decision-maker must be impartial. 2. Discretion is limited to routine ordinance/policy interpretation.

Zoning Permit Decision Process



Establishing a Plan Commission: Authority and Procedure

All towns, villages, cities and counties may establish plan commissions. Some municipalities have had a commission since their formation, while others are considering one now in response to Wisconsin's recent comprehensive community planning law.

Legal Requirements

A municipality should follow these steps to establish a plan commission:

1. Town electors should authorize village powers at an annual or special town meeting. The adoption of village powers by a town does not make it a village but provides clear authority to engage in planning activities and for appointment of a plan commission. See Fact Sheet #18 under Publications on the UW Extension Local Government Center website at <http://www.uwex.edu/lgc>.
2. Adopt an ordinance creating the plan commission. See Fact Sheet #16 under Publications on the UW Extension Local Government Center website. An example town ordinance is available at <http://www.uwex.edu/lgc/program/pdf/tpcord.pdf> or by calling 608-262-9961.
3. Appoint members. The table below describes membership requirements.

Creating a Plan Commission			
Local unit	Towns	Villages and Cities	Counties [distinguish between commission & committee]
Statutory authority	60.22(3)	61.35, 62.23(1)	59.69
Creation by ordinance	By town board after adoption of village powers.	By village board or city council.	By county board.
Membership	7 members if population is 2,500 or greater. 7 or 5 members if population is under 2,500.	Seven members.	Number of commission members not specified in statutes. Committee composed of county board members.
Appointment	Town board chair appoints – Chooses from among chair & other elected or appointed officials, at least 3 citizen members or 1 if under 2,500.	Mayor/village president appoints – self (optional), elected or appointed officials, at least 3 citizen members; can increase to include building inspector	Board chair or executive appoints commission subject to Board approval; may appoint 2 alternate members. Commission composition is flexible.
Terms	3 years	3 years	3 years with staggered commissioner appointments
Chairperson	Appointed by town board chair	Appointed by mayor/village president	Elected by committee/commission for 2 year term

Staggering of Terms

Only where a county appoints a plan commission (rather than relying on a standing committee) are commissioner terms required by statute to be staggered. However, staggered terms for non-elected commissioners prevent a turnover of all members at one time preserving institutional memory and continuity of administration.

Approval of Plan Commissioner Appointments and Selection Criteria

Approval for plan commission appointments by the governing body is legally required when appointments are made by a county executive. However, agreement about criteria for selection of qualified commission members is politically desirable and typically results in stronger support by the governing body both for commissioner appointments and for commission recommendations later on.

Appointment of plan commission members is an important decision and should recognize the duties of the commission (as outlined in the next section). Following are suggested criteria for appointment of plan commission members:

- Geographic diversity. Members from each distinct geographic or political area within the local government's jurisdiction can provide familiarity with the differing landscapes, natural resources and development patterns in the jurisdiction.
- Expertise in land use, development/construction and natural resources. Members with knowledge of land use law, zoning, construction or development practices or natural resources, and who are able to read site plans and maps, provide the plan commission with capacity to understand development proposals and to determine their impacts.
- Commitment to community service and continuing education. Members who have demonstrated an interest in community service by serving as elected officials, citizen advisors or in some other capacity, and who are willing to attend educational sessions for commission members, provide stable membership and sound decision-making.

Appointment of alternate members is advisable in order to:

- Avoid postponement of decisions due to absences, resignations or conflicts of interest;
- Provide experience for future regular commission members, and
- Provide a full commission and critical review of plans, applications and petitions.

Who Do Plan Commissions Work With?

Plan Commission (PC)

Plan Commissions have two key roles: community planning and plan implementation (usually including land use regulation). For planning purposes, commissions are authorized to prepare a comprehensive plan and recommend its adoption to the governing body that adopts the plan as an ordinance by majority vote. Commissions do not have the authority to adopt or amend the plan on behalf of local governing bodies. Important potential commission roles include sponsoring the planning process for their community, putting in motion the community's public participation plan for later adoption by the local board, and ensuring that as many points of view as possible are expressed in the course of the planning process. Some commissions oversee development of a request for proposals for professional planning services at the beginning of the process, or sponsor development of an action agenda that establishes priority strategies for plan implementation.

Town Board, Village Board, City Council, County Board

The elected governing bodies of general purpose local units of government or their chief presiding officers are responsible for appointment of plan commissions and ultimately for adoption of local plans and implementing measures including land use ordinances. Elected and appointed officials provide leadership for a fair, open planning process, one that recognizes public and private interests, and seeks to balance community *development* needs with *conservation* needs. The appointment of a diverse comprehensive plan committee is a critical element of this leadership role.

Citizens

Citizens are local experts on the issues & broader trends affecting their communities. Public input should be emphasized before, during and after comprehensive plan development. Directly, through participation in public meetings, focus groups and the like, and less directly, by responding to household surveys and informal discussions with neighbors, the public offers local perspectives and opinions that provide a non-technical focus for key issues addressed in the planning process. A range of opinions makes your plan stronger. The perennial challenge is getting significant input from the public in the planning process.

Clerk/Administrator

The local clerk at the town or village levels or zoning staff in counties or larger municipalities often play a pivotal role to ensure that proper procedures are followed, such as notices in the local paper, plan adoption requirements, etc.

Planning Advisory Committee

The local governing body may appoint an ad hoc advisory committee, sometimes called a citizens advisory committee or comprehensive planning committee, to sponsor and lead the process of developing the comprehensive plan. The plan commission, however, still has the legal responsibility to review and recommend approval of any plan brought back by the planning advisory committee.

Planning Staff

Professional planners act as core providers of technical services for comprehensive planning. They bring training and experience through the use of such methods as economic profiling, population projections, and land use regulation techniques. County planners often help county communities get organized for planning, develop and adopt public participation plans, explore community visions and goals for the future, and assist, as staff resources allow, in informational and technical aspects of plan and plan implementation. The department may provide geographic information systems (GIS) mapping data in support of municipal planning initiatives.

Attorneys (and the Law)

As we have noted in other parts of this handbook, planning and its internal process rests on legal principles, statutes, and codes. If the plan commission is consistent with their application of the rules, applicants who bring lawyers to plan commission meetings may differ in their interpretation of statutes or local codes, but it does not mean that the plan commission is wrong. If you have made decisions based on the law and have minutes of your meetings, threats to your decisions should not fluster you.

Developers and Builders

Developers and builders represent the private sector side of planning and development. They are the people and companies that build subdivisions and other development based on codes and regulations that a community has in place. While developers and builders may complain about regulations, they appreciate a place where the process for obtaining permits is streamlined, is transparent (there are no hidden costs or requirements), and expectations are clear, even though that place may be highly regulated. They operate on the basis of supply and demand. If your community has few regulations, but it's not clear how to get a permit, developers may go to a neighboring community where the process is transparent and it's easy to get a permit despite many more regulations.

Regional Planning Commissions

Wisconsin has nine Regional Planning Commissions (RPCs). All but five counties in the state (Columbia, Dodge, Jefferson, Rock, Sauk) are served by an RPC. RPCs in Wisconsin provide intergovernmental planning and coordination for the physical, social and economic development of a region. RPCs provide planning assistance on regional issues, assist local interests in responding to state and federal programs, act as a coordinating agency for programs and activities, and provide planning and development assistance to local governments. Specific examples of RPC services include: review and approval of plans for providing sewer service in larger communities as a designated management agency for the Department of Natural Resources, impact analysis for major development projects, comprehensive community plans; zoning and subdivision ordinances; grant writing; geographic information system map production; revolving loan fund administration; economic development planning; socio-economic data collection and dissemination, and public policy advocacy on issues affecting a region. Regional planning commissions are in a position to mediate disputes between governmental units and to assist in negotiation of intergovernmental agreements related to regional issues such as transportation, solid waste disposal, siting of communication towers or power generating facilities or administration of regional regulatory programs (such as non-metallic mine reclamation).

The Media

Involve the media from the outset of a planning process. The media provides education and knowledge on current events. At the same time the media may need to be educated about planning and planning issues. The media can keep the public aware of a current planning process and planning issues in general. Thus, using the media is a good way to get information out to the public.

Nearby Communities

Each community is part of a larger network of neighboring towns, villages and cities. Local land use decisions can have impacts outside a jurisdiction's own boundaries. Wisconsin's comprehensive planning law and the State's comprehensive planning grant application process recognize the need for intergovernmental coordination. The law asks for each local government to include an intergovernmental coordination element within its comprehensive plan to address consistencies between and among plans of different jurisdictions and to address how to deal with conflict if it should arise in the future over land use matters.

Cooperative Extension Educators

County Co-op Extension faculty seek to improve the quality of local decisions by providing public, private and non-profit clients with information, targeted research results, and process support.

Sources:

Bussiere, Merritt. 2001. Comprehensive Basics In-Service, June 12-14.

Senville, Wayne M. 2000. *Welcome to the Commission! A Guide for New Members*.

Champlain Planning Press, Inc., Burlington, VT.

Wisconsin Department of Transportation website

www.dot.state.wi.us/dtim/bop/planning-rpc.htm, Feb. 12, 2002.

Public Participation

Public participation can mean many things. The first step is to decide as a plan commission what objectives you have for public participation. Keep in mind that public participation can increase public understanding and acceptance of decisions but it also takes time and money. It may be helpful to think of public participation as a social contract with the public. Only ask for input from the public that you are willing to incorporate in your decisions. Choose one or more public participation methods from the following diagram to suit your public participation objectives.

If the objective of the plan commission is:	Then focus on methods that achieve:
To keep the public informed of the issue and process	Public awareness
To help the public understand the problem, alternatives, and/or solution	Public education
To keep the public informed, listen to and acknowledge concerns, and provide feedback on how public input influenced the decision	Public input
To work with the public to ensure that their concerns and issues are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision	Public interaction
To implement what the public decides	Public partnership/empowerment

The following table identifies methods of public participation, related participation objectives and the general level of public resource commitments required for each. Following the table is a brief explanation of each method.

Method	Public Awareness	Public Education	Public Input	Public Partnership	Resource Commitment by Local Government
Direct Mail	X				Moderate
News Releases	X				Low
Displays	X				Moderate
Public Educational Meetings		X			Low
Websites		X			Moderate-High
Open Houses			X		Moderate
Public Hearings			X		Low
Focus Groups			X		Low
Opinion Surveys			X		Moderate
Visioning			X		Moderate
Citizens' Advisory Committee			X		Moderate
Citizens' Planning Committee				X	Moderate-High
Referenda				X	Moderate

Methods of public participation

Direct mail:

- Works best when you have a simple message and an easily identifiable target audience.
- Requires little time commitment by citizens.
- Can reach a large number of people.

News releases:

- Work best to announce developments and decisions in the planning process.
- Can help keep the planning project in the public eye if well-timed and well-designed.
- Can reach a large number of people.

Displays:

- Are most effective when used in coordination with other public participation methods, such as an open house or visioning process.
- Are effective in getting information to segments of the public that might not otherwise participate in the planning process.

Public educational meetings:

- Are usually conducted to improve the public understanding of an issue, inform them of technical information necessary to understand the issue or to improve communication between citizens and decision-makers.
- Can be accomplished through seminars, workshops, simulation games, roundtable discussions, brown-bag lunches or audio-visual materials.
- Can increase the effectiveness the public has upon the issue if they become better informed and are more likely to express differing viewpoints.
- Are usually limited to a small group and therefore, can cause problems of who is included.

Websites:

- Work best to provide resources to the public for review at their own pace and on their own time.
- Can help keep the public well informed and educated about the planning project if well-timed and well-designed.
- May not reach low-income or elderly audiences.
- Can reach a moderate number of people, depending on the availability and use of computers.

Open houses:

- Create an informal setting to inform the public about the planning effort and provide the public an opportunity to ask questions and provide feedback about proposals.
- Have the potential to reach a moderate number of people.

Public hearings:

- Are the minimal legal requirement for public participation. All proceedings become part of the public record.
- Typically consist of at least four major parts:
 - A summary of why the project is being done
 - A summary of the range of solutions including the recommended solution
 - An evaluation of the consequences of each of the solutions
 - Reactions from the public to the proposed course of action
- Do not allow time for discussion and may intimidate many people.
- Can be improved by:
 - Holding an informational meeting prior to the public hearing so the public has an opportunity to learn about the issues and think about their reactions before the public hearing.
 - Presenting a summary of the issues at the beginning of the public hearing to increase public understanding and address misinformation.
 - Providing a question and answer session during the hearing.
 - Providing a break during the public hearing to allow informal questions before public comments are taken.

Focus groups:

- Are very useful for uncovering issues and concerns as well as the values, beliefs and attitudes that underlie the positions people take on issues.
- Are generally as effective as the moderator is skilled.

- Cannot be considered representative of a community because of the small number of participants.

Opinion surveys:

- Have the advantage of systematically describing the views of many people.
- Work best when potential courses of action can be weighed against some tradeoff of cost; work poorly when questions are general or non-controversial.

Visioning:

- Provides an inspirational context with which to guide the larger planning process because it asks the public to develop a description of their preferred future community.
- Requires considerable time and effort from participants and facilitators.

Citizens' advisory committees:

- Require a considerable commitment from the citizens involved and the planning commission which should give serious consideration to the advice they solicit from a citizens' advisory committee.
- Can provide detailed analysis of an issue and allow participants to gain understanding of other perspectives, leading to compromise.

Citizens' planning committees:

- Are formal groups comprised of local government officials and citizens, each a full voting member designing and implementing plans.
- Work best when government is genuinely willing to partner with citizens in the planning process.
- Require considerable investments of time and energy by citizen members and local government.

Referenda:

- Come in two forms. With binding referenda, citizens make policy decisions by a simple majority vote without the advice and consent of the local government. With advisory referenda, citizens advise the local government on a policy decision, but the governing board makes its own decision.
- Can be initiated by citizen petition or the local government.
- Work best when the government faces an "either-or" decision; work poorly with complex or technical issues.
- Have the potential for engaging high numbers of citizens.

This section is adapted from UW-Extension Citizen Participation Team Training Manual which was modified from the International Association for Public Participation.

Public Meetings and Hearings

Public Relations

How well a community accepts a plan commission decision depends on much more than the decision itself. Public relations matter. The actions of plan commission members influence whether citizens feel they were listened to, respected, and given fair consideration when the decision was made. Here are some steps commissioners can take at public meetings and hearings to bolster public confidence in the commission and its decisions.

Attend meetings and be on time

These simple actions speak for themselves indicating your commitment and respect for all people involved.

Provide opportunities for public participation

As a commission set objectives for public participation in your decisions and then choose methods that meet these objectives as described in the *Public Participation* section of this handbook.

Clearly explain the process for making decisions:

- Describe the nature and importance of the decision.
- Identify who will make the decision.
- Describe the decision-making process.
- Describe the criteria that will be used to make the decision.
- Describe opportunities for public participation.
- Describe how the commission will respond to public comments.
- Describe the timeline for making decisions.
- Describe appeal rights when they exist.

Listen

Citizens present at plan commission meetings have demonstrated their interest by attending the meeting. They may have also spent significant time researching and thinking about the issue at hand. Although not required by law at all governmental meetings, citizens generally appreciate the opportunity to comment on issues being discussed. They have listened to you – do the same for them. Prior to a decision, provide a brief comment period for interested persons to address the commission. When citizens are speaking, pay attention. Taking a restroom break, reading, sorting through papers, or adjusting equipment sends the message that you do not value their thoughts. Do not assume that you know what they will say based on groups they are associated with or comments they have made in the past. Demonstrate you're listening by restating what you've heard from citizens, responding to their comments and following up with any questions you have.

Show respect

Many citizens are not acquainted with legal, real estate, building, scientific or economic jargon. Explain the terms you use to make discussions easier to follow. Answer questions as directly as you can. If you don't know the answer to a question, and the answer is important to the discussion, promise to investigate it and follow through.

Become well informed

As a plan commission member you must understand development and policy proposals so that you can contribute to the discussion and decision. It is also important to educate yourself about other topics that apply to most commission decisions:

- Meeting protocol
- Open meeting laws
- Conflict of interest laws
- Zoning codes
- Relevant science and economics
- Building and construction practices
- Roles of the commission, staff and governing body
- Group dynamics and politics

Sources of this information include professional staff, local plans and ordinances, experienced plan commission members, related web sites, workshops for commissioners and this handbook.

Ask questions

Do not assume that you know answers to questions. If you do not understand exactly what is being proposed and which local ordinances apply, find out. In addition, ask obvious questions to confirm common understanding.

See *Making Decisions* on page 33 for further guidance about good relations between the commission and community citizens.

Making Decisions

As a plan commission member you must make decisions that are legally and technically sound. You should also consider the effect of your decisions on other administrative staff, elected officials and citizens in your community.

Prepare prior to the meeting

Prior to meetings, study staff reports, applications, maps and ordinance provisions. In the case of development proposals, ordinance requirements related to a project should be outlined in a pre-application checklist or staff report. Visit the site if it is necessary to determine whether the application and plan provide an accurate and complete picture of the proposal including:

- physical measurements and topography,
- geology, hydrology and vegetation,
- structure, utility and roadway locations and dimensions,
- effects on neighboring properties,
- economic impacts,
- natural resource impacts, and
- necessary permits from other agencies.

Establish the credibility of testimony and evidence

At the hearing or meeting, ask those who provide testimony to describe their education and experience related to the information they are presenting, the source of the information and whether conflicting information exists. Ask questions in order to clearly understand the proposal and its impacts.

The project plan and permit application are critical elements of the development authorization process. The process should not proceed until both are complete and accurate. Answers to all questions raised about a proposal should be provided in the official record on the matter and considered in decision-making. To avoid later misunderstandings, approved construction standards (setbacks, height limitations, landscaping details, etc.) should be recorded on the final site or construction plans. Otherwise, corrections may be difficult or impossible when a project is half completed.

Agree on and publicize standards for good policy decisions

A good decision is:

- based in fact and science;
- consistent with related policy/ordinance decisions;
- clearly linked to stated community objectives;
- technically and administratively capable of being implemented;
- politically acceptable as measured by support of the local governing body and a majority of citizens; and
- as simple and understandable as possible.

Explain your decision

Weigh the evidence, make up your mind, explain your reasoning and stand behind it. People who do not agree with your decision can still respect your reasoning if you can clearly explain it.

Conflicts of Interest, Voting and Open Records Law

Statutory conflicts of interest

In addition to common law notions of fairness, Wisconsin Statutes contain specific conflict of interest provisions that apply to plan commission members and other local officials. In cases where a commissioner has a legal or ethical conflict related to a quasi-judicial decision before the commission, the commissioner should refrain from all participation in decision-making including discussion among commission members. A commissioner who wishes to present evidence in such a matter may testify at the public hearing and should consider absenting him/herself from the commissioner's table during related deliberations.

Code of ethics. State laws prohibit public officials from taking official actions that substantially affect a matter in which the official, an immediate family member or an associated organization has a substantial financial interest.²⁹ Similarly, an official may not use public office for financial gain or to gain anything of substantial value for the official, an immediate family member or an associated organization. Compliance with the statute will protect a member from prosecution under the statute but does not assure compliance with other fair play and due process requirements.

Private interests in public contracts. State laws³⁰ also provide for felony prosecution of a public official who engages in specified activities related to public contracts in which the official has an interest. This is an issue where the commission decides conditional use permits or retains consulting services where members may have an interest. In certain cases abstention will not prevent a violation of the law.

Open voting

Minutes of plan commission meetings and hearings must be kept showing how each member voted, including absences and abstentions. In general, elections and decision-making by governmental bodies must be conducted by open voting.³¹ By statute, each member's vote must be recorded in specified cases including motions, seconds and the vote of each member to convene in closed session. Motions, any roll call votes and voting results must be recorded and made available to the public consistent with the Wisconsin Public Records Law.

Open records

This law generally provides the public with the right to inspect public records.

Noted exceptions outlined in State Statutes include:

- Some information from closed sessions.
- Information connected with a complaint, investigation or other circumstances that may lead to an enforcement action or other litigation.
- Proprietary information.
- Information that, if disclosed would endanger an individual's life or safety, identify a confidential informant or endanger the security of designated institutions.³²

A governmental unit is not required to create a new record/document in response to a public records request and may charge reasonable fees for locating and duplicating a record.

Voting

Generally, a simple majority of a quorum is sufficient for the commission to approve a petition, application or resolution unless local rules require a supermajority or a majority of the full commission to vote in favor of a measure for it to be adopted.

Reconsideration of decisions

The commission or administrative staff can deny requests for re-hearings on a matter unless there is a significant change in the project proposal, new information relevant to the decision or reversible error in the original process/decision. Commission decisions may be appealed as prescribed by state law or local ordinance (see *Appeal of Commission Decisions*).

Open Meetings and Public Notification

Open Meetings Law

All plan commission meetings and hearings must comply with the Wisconsin Open Meetings Law³³. The law is intended to give the public prior notice of meetings of governmental bodies and to assure that they are held in places that are reasonably accessible and open to the public. Some meetings or portions of meetings may be held as closed sessions but, generally, discussion and decision-making at governmental meetings must be conducted in open session with motions and voting open and recorded. However, the law does not require meetings to provide a forum for public discussion. Individual commission members must determine compliance with Open Meetings Law provisions in deciding whether to participate in a meeting. The plan commission usually designates its secretary or a staff person to provide the required public notice of its meetings and hearings.

Meetings

Under the law a *meeting* occurs when both the purpose test and the numbers test are met:

- The purpose test is met when discussion, information gathering or decision-making take place on a matter within the jurisdiction of the governmental body.
- The numbers test is met when enough members of the body are present to determine the outcome of an action. By statute, if one-half of the members of the body are present, there is presumed to be a meeting unless the purpose test is not met. A lesser number of members may also meet the numbers test if, for example, a supermajority is required to make a decision.

Phone conferences may constitute a meeting if the numbers and purpose tests are met. A sequence of phone calls to “line up votes” or conduct other governmental business (known as a *running quorum*) constitutes an illegal meeting since it is not noticed and open to the public.

Chance and social gatherings and conferences where the numbers test is met are not meetings provided the purpose test is not met (i.e. no governmental business is discussed).

Site inspections for conditional use permits and other field trips must comply with the Open Meetings Law if the purpose and numbers tests are met. If plan commission members travel together, they should refrain from discussing commission business while in transit. Inspections and field trips where no testimony is taken and no discussions are held constitute meetings if the numbers test is met since their intended purpose is to gather information relating to commission business.

Meeting Access and Notice

Open meetings. Unless specifically exempted, all meetings of governmental bodies must be open to the public and reasonably accessible to the public, including persons with disabilities.

Notice of meetings. Notice of a public meeting is required and may be accomplished by posting in one or more public places likely to give notice to the public and those affected by the decision.³⁴ (A minimum of three locations is

recommended.) Paid, published notices are not required by the Open Meetings Law. However, where other statutes require paid publication of a hearing or meeting notice, the following Open Meetings Law requirements may be incorporated in the published notice (posting is recommended in addition to publication).

- 1) 24-hour prior notice. Notice of a public meeting must be provided at least 24 hours prior to the meeting. Where such notification is impossible or impractical for good cause, notice may be provided not less than 2 hours prior to the meeting.
- 2) Notice to media. Notice (written, phone or fax) must be provided to any media who have filed a written request and to the governmental unit's official newspaper, or, if there is no official newspaper, to a news medium likely to give notice in the area.
- 3) Separate notices. A separate notice is required for each meeting (a general notice at the beginning of the year is not sufficient).
- 4) Content of notice. Notice must specify the time, date, place and subject matter of the meeting, any contemplated closed session and intent to reconvene in open session if the open session is within 12 hours after completion of a closed session.³⁵ The notice must describe issues on the agenda in enough detail to allow them to be identified by those likely to be affected by any decision. It may provide for a period of public comment and discussion. However, only issues included in the public notice and agenda may be decided.
- 5) Proof of notice. An affidavit of publication by a person posting legal notice showing the time, place and manner of posting affixed to a copy of the published notice is presumptive evidence of publication.³⁶

Meetings must also comply with other notice requirements imposed by local ordinance or bylaws.

Permitted Exemptions for Closed Sessions

Statutes provide specific exemptions from the Open Meetings Law. Those listed below are most likely to apply to plan commissions.

- 1) Deliberation concerning a case. Deliberation concerning a case that was the subject of a quasi-judicial hearing.³⁷ The courts have determined a *case* to be an adversarial proceeding with opposing parties, not merely an application for a conditional use permit, variance or appeal.
- 2) Actions concerning public employees. Consideration of dismissal, demotion, licensing or discipline of a public employee or licensee unless the employee or licensee requests that the meeting be held in open session.³⁸ Consideration of employment, promotion, compensation or performance evaluation data of a public employee.³⁹
- 3) Potentially damaging personal information. Consideration of financial, medical, social or personal histories or disciplinary data of *specific* persons that would be likely to have a substantial adverse effect on the reputation of a person.⁴⁰
- 4) Conferring with legal counsel. Conferring with legal counsel about strategy regarding current or likely litigation.⁴¹
- 5) Request to an ethics board. Consideration of a request for confidential written advice from a local ethics board.⁴²
- 6) Matters which include business competition or bargaining issues such as public land acquisition, retaining consultants.⁴³
- 7) Economic adjustment discussions to address layoffs or business closings if these discussions could adversely affect the business or employees.⁴⁴

- 8) Other narrow exemptions. Specified deliberation regarding unemployment and workers compensation, burial sites and other narrow exemptions provided by statute.⁴⁵

Conduct Of Closed Sessions

1. Convene in open session. The body must initially convene in open session.
2. Move to closed session. To convene in closed session (from open session), the presiding officer must announce the specific subject matter and statutory authority for closure. A motion and recorded individual vote by a majority of the body are required to convene in closed session.
3. Attendance at closed sessions. Only members of the commission and those essential to the business for which the session was closed may attend a closed session. The zoning administrator or staff person who presented testimony on the matter before the commission usually should not attend closed sessions. Generally, members of the local governing body may attend closed sessions of the commission since a statutory exemption allows a parent body to attend closed meetings of its subunits.
4. Motions and decisions. Motions and decisions must be recorded. Where feasible, vote in open session.
5. Matters for discussion. The body may consider only the matter(s) for which the session was closed.
6. To reconvene in open session. Once a body convenes in closed session it may not reconvene in open session for at least 12 hours, *unless* public notice of its intent to return to open session was given in the original notice of the meeting. Absent such notice, the body should amend its agenda to place any closed session at the end of the agenda.⁴⁶ When there is good cause, 2-hour prior notice of a planned closed session and reopening can be provided to allow reopening a meeting but this approach is rarely necessary.

Violations and Liability

- 1) Determine proper notice. At the beginning of a meeting, each member of the body should determine whether the meeting had proper notice. If compliance is questionable, the municipal attorney should be able to provide counsel on the matter.
- 2) Limit closed sessions. Members should vote against convening closed sessions that are not authorized by specific exemptions of the Open Meetings Law. They should also insist that proper procedures be used to close and reopen sessions. Members who vote against convening a closed session may participate in the closed session without liability if it is held.
- 3) Individual liability. Plan commission members can be sued individually or as a group for alleged violations. Forfeitures (\$25-\$300) can be levied against members who break the law. The municipality may not reimburse members for these forfeitures.
- 4) Decisions may be voided. A court may void an action taken by a body at an illegal meeting if it finds that the public interest in enforcement of the Open Meetings Law outweighs any public interest in sustaining the body's decision.
- 5) Document proceedings. A log or minutes documenting proper notice and recording motions, rationale and any votes on abbreviated notice, amended agendas or closed sessions is a useful defense against allegations of Open Meetings Law violations (most often made by media or persons displeased by decisions).

This section adapted from Wisconsin Open Meetings Law, Fact Sheet Number 12, 1999, by James H. Schneider, J.D., UW-Extension Local Government Center

Conducting Meetings

Encouraging public participation in community meetings is an important commission function. This section provides recommendations for the conduct of public meetings and hearings. Citizens are more likely to attend meetings that are productive and accomplish objectives stated in the agenda. Commissioner actions before, during and after the meeting will determine levels of public participation and confidence in commission decisions. Other methods of community involvement in decision-making are described in the section titled *Public Participation*. The distinction between a public *meeting* of a governmental body and a public *hearing* before it is a matter of purpose. A meeting is for the purpose of conducting the business of the body and may or may not involve opportunities for public involvement. A hearing is held for the express purpose of gathering information from the public regarding a pending application, petition or policy proposal. For this reason, statutes require more extensive notification for public hearings than for meetings of governmental bodies under the Open Meetings Law.

Before the meeting

- 1) Develop an agenda that clearly states the purposes and tasks for the meeting. Use common language. Starting the meeting with routine items and non-controversial issues builds decision-making momentum.
- 2) Choose a date, time and place convenient to the majority of interested citizens.
 - a) Allow adequate time for staff and commission members to complete their assigned tasks prior to the meeting.
 - b) Avoid conflicts with other scheduled local meetings.
 - c) Choose a place with sufficient space, adequate parking and reliable heating, cooling, lighting and public address systems.
- 3) Make arrangements for the meeting place, refreshments, nametags, informational handouts, audio-visual equipment and any required outside speakers.
- 4) Provide public notice according to the legal requirements described in *Open Meetings and Public Notification* and provide other publicity to assure that those likely to be affected by the policy or decision are aware of the meeting.
- 5) Planning department staff or the commission secretary should send the meeting notice, agenda, petitions and applications, staff reports and any additional logistical details to commission members and any outside speakers providing sufficient time for them to prepare for the meeting.

At the meeting

- 1) Arrive early to make sure that the meeting place is open and arranged for presentation and discussion. Arranging chairs in a circle or semi-circle facilitates face-to-face discussion.
- 2) Provide nametags, introductions and appearance registration forms for those wishing to address the commission.
- 3) Record meeting minutes.
- 4) Call the meeting to order on time.
- 5) Take roll and confirm that public notice requirements have been satisfied.
- 6) Announce the purpose of the meeting and the agenda to those in attendance.

- a) Amend the agenda if practical to accommodate citizens who wish to leave after their issue has been addressed or as otherwise necessary to provide an efficient and orderly meeting.
 - b) Identify the procedures and time for public comment (during the meeting, at the end of the meeting, at the public hearing).
 - c) Explain the decision-making criteria used by the commission and the number of votes necessary to make a decision.
- 7) Provide background information for each agenda item through staff reports, minutes from past meetings or summaries from plan commission members.
 - 8) Provide handout materials for all in attendance and help them to feel at ease to encourage their participation.
 - 9) Ask questions to stimulate discussion and discover the information necessary for making decisions.
 - 10) Take a break to provide time for informal discussion and refreshments. Remember that only information contained in an official record may be considered in quasi-judicial matters.
 - 11) Make timely decisions. Based on the information presented and applicable local policy and ordinances, the chairperson may ask for the thoughts of each commission member on the matter and then sum up the thoughts of the commission and ask for a motion. Commission members then propose and amend motions that capture the common ground of the majority of the members.
 - 12) Vote and conduct other business in open session unless operating in a permissible closed session. Review *Open Meetings and Public Notification*.
 - 13) At the end of the meeting:
 - a) summarize findings, discussions and decisions,
 - b) assign tasks, and
 - c) set the agenda, date, time and location for the next meeting.

After the meeting

- 1) Visit informally observing open meeting law requirements and, for hearings in quasi-judicial matters, due process concerns.
- 2) Prepare meeting minutes to:
 - a) provide a record of the rationale for decisions for later legal review or policy interpretation,
 - b) serve as a reminder to complete tasks assigned at the meeting,
 - c) inform those who could not attend, and
 - d) comply with open records laws.

Source: Portions adapted from Ayres et al. 1987. Take Charge: Economic Development in Small Communities. North Central Regional Center for Rural Development pp. 181-186.

Notification of Public Hearings

All hearings held by plan commissions must comply with applicable notice requirements of:

- the Wisconsin Open Meetings Law,
- statutes governing procedures for plan commissions,
- Department of Natural Resources rules for shoreland, shoreland wetland and floodplain zoning matters, and
- other notice requirements imposed by local ordinances or bylaws.

Notice Requirements For Public Hearings Before The Plan Commission/Committee	
Decision	Public notification requirement
Comprehensive plan adoption or amendment ⁴⁷	Class 1 notice at least 30 days prior to hearing
Ordinance adoption or amendment ⁴⁸	Class 2 notice
Quasi-judicial matters (variances, appeals, CUP's & approvals)	As specified by local ordinance

Class 1 notice – 1 newspaper publication at least one week before the act or event.⁴⁹

Class 2 notice – 2 newspaper publications, at least once each week for consecutive weeks, the last at least one week before the act or event.⁵⁰

Posting – Display of a notice in at least 3 public places public places likely to give notice to the public and those affected by a decision.⁵¹

In computing the time for publication, the first day of publication is excluded and the day of the event/meeting is included.⁵²

Newspaper publication must be in the community's *official* newspaper or, if no official newspaper is designated, in a newspaper likely to give notice in the affected area.⁵³ The information provided in a published or posted notice must be provided by phone, fax or written copy to any media requesting it and to the community's official newspaper as provided in the Open Meetings Law.

Additional notification

Generally, notice of proposed ordinance amendments within three miles of an airport must also be sent to the owner or operator of the airport.⁵⁴ Notice must also be given by mail to the parties in interest regarding variances, appeals, conditional uses and other quasi-judicial matters.⁵⁵ The parties include:

- the applicant/appellant/petitioner, and
- adjacent or nearby property owners as specified by ordinance.

Agency Notification

Department of Natural Resources (DNR) notification.

The appropriate local DNR office must be provided with 10-day prior notice of hearings on shoreland, shoreland wetland and floodplain zoning map or text amendments, variances and conditional uses. DNR must be provided with copies of related decisions within 10 days.⁵⁶

Department of Agriculture, Trade and Consumer Protection (DATCP) notification. DATCP must be notified of any approval in the case of a rezoning or conditional use in an exclusive agricultural zoning district under the state farmland preservation program.⁵⁷

Notice Contents

The following information should be included in the notice:

- 1) Name of the governmental body that will meet.
- 2) Date, time and location of hearing.
- 3) Name of the applicant, appellant or petitioner.
- 4) Location of land involved.
- 5) General description of the proposal, application or petition.
- 6) Subject matter, statutory authority (recommended) and notice of any anticipated closed session and any intent to reconvene in open session within 12 hours after completion of a closed session.⁵⁸ Review the exemptions and procedures for closed sessions in *Open Meetings and Public Notification*.
- 7) Notice that interested persons may present testimony regarding matters on the agenda at the meeting/hearing or in writing to the board prior to a deadline.
- 8) Contact information for further information about the proposal or application.

Proof of Notice

An affidavit of publication by a newspaper editor or his/her designee showing the name of the newspaper and dates of publication affixed to a copy of the published notice is presumptive evidence of publication.⁵⁹ A similar affidavit by a person posting legal notice showing the time, place and manner of posting serves the same function for posted notices.⁶⁰

Conducting Public Hearings

Public hearing requirements are intended to gather public input about important issues prior to governmental decisions. Plan commissions hold public hearings when developing recommendations for the adoption or amendment of community comprehensive plans and land use ordinances and when considering applications for conditional uses or other project proposals. Public hearings regarding the creation or amendment of city, village or town official maps and zoning ordinances may be held by the plan commission, governing body or other committee designated by the governing body.

Information to guide the commission in conducting its public hearings is provided in two parts. First is a checklist that the chair and commission members can use to prepare for and conduct hearings. The second part is an announcement to be read to those in attendance at the opening of hearings describing the role of the commission and the sequence of events at the hearing.

Public Hearing Checklist

- 1 Prior to public hearing [designated staff]
 - ☐ A. Arrange for alternate(s) due to anticipated absence or conflict of interest
 - ☐ B. Send agenda, proposal and staff reports to commission members
 - ☐ C. Comply with open meeting law & public hearing notice requirements
 - ☐ D. Arrange for tape recording of meeting or a court reporter
- 2 Preliminary matters at meeting
 - ☐ A. Distribute and collect appearance slips [chair]
 - ☐ B. Call hearing to order [chair]
 - ☐ C. Take roll [secretary]
 - ☐ D. Confirm compliance with open meeting law and public notice requirements [members]
 - ☐ E. Read agenda and amend as necessary (reorder hearings) [chair & members]
 - ☐ F. Inform the public in attendance of hearing procedures (see announcement below) [chair]
- 3 Public hearing
 - ☐ A. Open first public hearing [chair]
 - ☐ B. Read petition or application [staff]
 - ☐ C. For plan or ordinance proposals provide a summary and rationale and allow time for group and individual questions and answers.
For quasi-judicial matters present the staff/technical report. [staff, commission members and/or experts]
 - ☐ D. Report on any related correspondence [staff]
 - ☐ E. Disclose any ex parte communication (in quasi-judicial matters) [commission]
 - ☐ F. Request public comments (in order pro/con/information) [chair]
 - ☐ G. Request response by the applicant (in quasi-judicial matters) [chair with questions by commission]
 - ☐ H. Clarification or response to public comments [staff and/or commission]
 - ☐ I. Final questions [commission]
 - ☐ J. Close record & hearing [chair]
- 4 Deliberation and decision or recommendation In quasi-judicial matters such as variances, appeals, conditional uses or other approvals, the commission should follow the following format.
 - ☐ A. Findings of fact (based on ordinance jurisdiction & standards)
 - Determine whether application contains information necessary to make decision.
 - Determine whether board has authority to make decision.
 - Record pertinent facts from record and hearing on decision form.
 - ☐ B. Conclusions of law
 - Specify applicable legal standards.
 - Determine which facts relate to the legal standards.
 - Determine whether legal standards are met.
 - Agree on any permit conditions.
 - ☐ C. Order and Determination
 - Vote on case.
 - Direct any action to be taken by zoning administrator or other official.
- 5 Repeat steps 3 and 4 for other hearings
- 6 Other agenda items
- 7 Adjourn meeting

The commission chair should describe the commission role and the order of business to those in attendance to promote orderly and fair conduct of hearings. The following announcement can be used or modified for this purpose.

Announcement of Hearing Proceedings

Role of the Plan Commission (plans and ordinances)

The plan commission makes recommendations to the governing body about the adoption and amendment of community comprehensive plans, development plans, official maps, ordinances and other matters. When considering specific development proposals such as variances, appeals, conditional uses or other approvals, the plan commission functions like a court. In this situation, the plan commission does not have authority to amend or repeal any provision of an ordinance. Its job is to apply ordinances and appropriate legal standards to the facts of each case. If site plan approval is required in addition to an ordinance map or text amendment, that approval is a separate decision that will be considered if the amendment petition is approved by the governing body.

Purpose of Public Hearing

The purpose of a public hearing is to give a full and fair hearing to any person affected by the plan, ordinance or other matter under consideration prior to a final governmental decision. Proposals can be changed before a final decision is made in the matter. Hearings are open to the public and prior notice of hearings is provided. A taped recording is being made of the proceedings (or a reporter is recording the proceedings). Hearing minutes will be available in the (Planning and Zoning Department) approximately (2 weeks) after the hearing.

Order of Events for Hearings

Each hearing will be opened with a summary of the petition for ordinance or plan amendment or a reading of the application or request. Time will then be provided for questions and answers to clarify the proposal. Any commission site inspection report will then be read. An applicant/appellant's statement and the zoning department report will each be followed by related commission questions. Witness testimony from those that have submitted appearance slips and related commission questions are next, followed by responses from the applicant and zoning department and any remaining commission questions. If the commission has all of the necessary facts, it will close the record and may deliberate and decide this matter before proceeding to the next hearing or may decide it at a later time. Decisions will be reduced to writing, filed in the planning and zoning office and mailed to parties in interest as soon as practicable.

Expiration and Revocation of Permission to Develop

Any permission to develop granted by a decision of the commission must be authorized by obtaining the necessary building, zoning and other permits from the zoning department. Construction must be substantially completed within (12 months) of the date of the commission's decision. This period will be extended if a court order or operation of law postpones the final decision and may be extended for

(continued on next page)

other good cause. Permission to develop may be revoked for violation of any of the conditions imposed by the commission. The applicant will be given notice of the violation and an opportunity to be heard.

Appeal of Plan Commission Decisions

A decision of the plan commission regarding a variance, appeal, conditional use or other approval may be appealed as provided by ordinance by filing an appeal stating reasons for contesting the commission's decision with the (body) within (30 days) of notice of the decision. An applicant that commences construction prior to expiration of the appeal period assumes the risk of having the plan commission decision overturned.

Recommendations of the plan commission regarding plan or ordinance adoption or amendment cannot be appealed because they are not final governmental decisions. In these cases members of the public should direct comments both to the commission and to the community's governing body.

Instructions for Witnesses

Anyone wishing to speak should complete an appearance slip and deliver it to the plan commission chair. You must be recognized by the chairperson in order to speak. When called upon as a witness, you may be sworn if required by commission bylaws. Please address your comments and questions to the chair and state:

- your name and place of residence,
- whether you represent a group or association,
- your education and/or experience related to this matter and the source of your information, and
- whether you favor, oppose, or are only providing information in this matter and
- your concerns/comments.

Please confine your testimony to facts related to the proposal at hand and avoid repetitive testimony. You will be limited to (5) minutes (optional).

Contested cases

Modify the announcement above for hearings the commission conducts as contested cases. For example, the commission may decide to conduct a hearing on a variance, conditional use or administrative appeal as a contested case at the request of an applicant.

A contested case is a proceeding in which:

- testimony is taken under oath,
- parties have a right to review and object to evidence presented by other parties,
- objections are entered in the record, and
- parties may cross-examine witnesses who present testimony.

In contested cases, a party may object to the introduction of written materials or photographs as evidence unless they are given an opportunity to question the writer/photographer and to provide a written reply regarding the evidence. Contested cases usually include a complete written record of the proceedings (often by a court reporter).

Appealing Plan Commission Decisions

Final Decisions, Standing To Appeal And Time Limits

Nearly all government decisions can be appealed. However, a decision must be a final decision of the governmental unit in order to be *appealable*. Therefore, advisory recommendations for adoption or amendment of a plan or ordinance cannot be appealed.⁶¹ Quasi-judicial decisions by the commission are final and can be appealed as specified by state law or ordinance to the local governing body, zoning board of adjustment/appeals or circuit court. If the zoning ordinance does not state where such appeals are taken, the commission decision may be appealed to the zoning board of adjustment/appeals.⁶²

Proper criteria for review of commission decisions by the zoning board appears to be an unsettled matter. Some zoning boards approach review as the courts would (described below). Others hear the matter *de novo* (anew) taking testimony, supplementing the official record and substituting zoning board judgment in the matter for that of the commission. One line of argument for avoiding this latter approach is that, if the local governing body had intended to rely on the greater expertise or judgment of the zoning board in such matters, it could have assigned the initial decision to the zoning board (as many have done).

An applicant that commences construction prior to expiration of the appeal period should be warned that he or she assumes the risk of having the plan commission decision overturned (as noted in the announcement provided for reading prior to hearings and on the decision form included in the appendix). Where an appeal period is not fixed by ordinance, courts have determined that affected parties may be able to file an appeal within a reasonable time of learning of a decision (such as when construction commences).⁶³ For this reason it is particularly important that ordinances specify time limits for appeals and that affected parties be provided with decisions. The burden of notifying affected parties of a decision can be shifted to project proponents to some degree. They have strong incentives to assist in bringing finality to commission decisions so that construction can commence. They can be required or encouraged to erect signs ("Coming soon... MegaMall") or to provide written notice of decisions to neighbors.

Court Actions

Court review of a commission decision is highly deferential to the commission if it followed correct procedures, applied appropriate decision criteria and was unbiased in its decision-making.⁶⁴ Even if the court would not have made the same decision, it will uphold the commission decision if supported by a reasonable view of the evidence in the record on the matter. The court, in overturning a decision, will typically send the case back to the local decision-making body (remand it) for further proceedings consistent with the court's opinion. In quasi-judicial matters, the court may wholly or partly affirm, reverse or modify the decision appealed.

The court's review in such cases is limited to:

- 1) Subject matter jurisdiction
Did the board decide a matter that it is empowered by statute or ordinance to act on?
- 2) Proper procedures
Did the board follow proper procedures (notice, hearing, record of decision, open meeting law)?
- 3) Proper standards
Did the board apply proper standards in making the decision (e.g. 3-step test for a variance)?
- 4) Rational basis for the decision
Could a reasonable person have reached this conclusion?
- 5) Evidence in the record
Do facts in the record of the proceedings support the decision?

These five points provide an excellent checklist that the commission can use in judging the overall quality (and defensibility) of its decisions.

Citizen Advisory Committees

Local government planning bodies often rely on committees of citizen advisors to study issues and provide policy recommendations. Advisory groups offer a number of advantages:

- They can more fully represent the values of all interested groups than elected or appointed decision-makers can.
- Citizen advisors bring time, energy, perspective and expertise to the table that may not be available elsewhere.
- Advisory committees provide a degree of political insulation for committees of elected officials. In some cases their recommendations serve as trial balloons that elected officials can use to judge public acceptance of proposed policies.

However, some foresight and planning are necessary for investments in advisory groups to pay off. Consider the following points in designing the process, appointing members, conducting meetings and making decisions.

1 PLAN FOR THE PROCESS

- **Allow enough time** Consider adoption of moratoria on problematic development activities, locations or land divisions in order to allow adequate time for planning, public discussion of issues and adoption of new policies. A moratorium is a temporary ban on development adopted by local ordinance.
- **Set priorities or segment the project** Identify priority issues or divide projects into segments in order to focus advisory committee efforts on the most pressing problems .
- **Provide a clear charge** Provide direction for advisors by defining issues, project objectives and a timeline for decision-making.

2 DECIDE COMMITTEE COMPOSITION

- **Identify interests** Adequate stakeholder representation is important to project success. Include economic, social, political and cultural interests likely to be affected by changes in local policies. Assess the risks of excluding less obvious categories of stakeholders including those who believe their interests will be affected (even though it is unlikely); those whose power or influence may be enhanced or diminished as a result of a new policy; political or social movers and shakers and the perennial nay-sayers in the community. Generally, the more likely an interest is to be significantly affected, the more consideration should be given to its representation on an advisory committee.
- **Decide criteria for committee member selection** Criteria for selection of advisors should be agreed upon by the appointing body and publicized prior to nominations for committee membership (e.g., credentials or experience in related issues, wide geographic representation, representation of governmental subunits as well as “open mindedness”, record of prior civic involvement, etc.). Consider asking interest groups to select their own representative in order to avoid any appearance of biased selection. Limit membership to less than twenty interests/members if possible and consider appointment of an odd number to avoid tied votes.

3 MANAGE MEETINGS

- **Maintain a learning curve** The frequency and time of meetings can be critical. If possible hold meetings every other or every third week to encourage retention of information by members, cumulative learning and decision-making that is consistent with prior decisions. Allow sufficient time between meetings for staff to prepare supporting materials. Choose a time convenient to members but avoid evening meetings if possible (tired members = poor decisions).
- **Adhere to a project schedule and meeting agendas** Work schedules allow support staff to provide educational materials, expert testimony, alternative proposals and consultant work products in a timely manner. Compliance with a detailed meeting agenda encourages orderly progress and helps to focus discussions on the issues at hand.
- **Assure open meetings but manage public participation** Meetings must comply with the state Open Meetings Law where the committee is appointed by and advisory to a local government body (24 hour prior notice of meeting agenda to the public and media and public access are required under s. 19.81-85 Wis. Stats.). However, working committee meetings may not be well suited for lengthy public participation and it is not legally required. Consider a short period for public comment at the end of meetings. Provide for considerable public input periodically or later in the process when a preliminary proposal has been formulated for interested parties to react to.
- **Encourage citizen leadership** Identify and support leadership within the committee. Encourage learning about the rules, procedures and skills involved in conducting meetings to provide local capacity for future public policy development efforts.

4 PROVIDE GROUND RULES

- **Provide rules for attendance at meetings** Put in place rules for replacement of members who do not attend meetings. For example, replace members who miss 2 meetings or who fail to notify an alternate when they are absent.
- **Establish voting status** Distinguish between voting members who represent selected interests and non-voting advisors who are present at meetings to provide information or technical expertise.
- **Determine voting standards** Choose consensus or decision by majority or super majority votes (e.g. 2/3 vote). Requiring a super majority on individual motions may demonstrate a greater level of support but leads to many failed motions even where majority support for most proposals is clear and consistent. Progress may slow and member interest ebb.
- **Promote open voting** State laws generally require open voting by governmental bodies and their appointed committees. Encourage or require advisory committees to provide a summary of the rationale for each recommendation. Compromise is more likely where members can explain how their *interests* may be affected by a proposal rather than simply expressing a *position* on an alternative under discussion.
- **Provide agreed on decision-making criteria** Agreed on criteria for good decisions help individuals and the group articulate reasons for support or objection to particular proposals.

A good decision is:

- based in fact and science

- consistent with related policy decisions (internally consistent)
 - clearly linked to general policy objectives
 - technically and administratively capable of being implemented
 - politically acceptable (public support and adoption by the local governing body)
 - as simple and understandable as is possible
- **Determine status of CAC recommendations** An elected body should not modify advisory recommendations without notice to the advisory committee and an opportunity for its members to be heard on the matter. Elected officials should be bound by the same criteria for good-decision making as their advisors and should share their reasons for any proposed changes with advisors. Failing to observe this agreement can create an undercurrent of mistrust between local government and citizens and will certainly hamper appointment of future advisory committees.

While advisory groups can be significant assets to community planning, planners must acknowledge and compensate for some inherent limitations of this group process.

- Assembling interest groups in direct contact may cause some to become further polarized and reduce chances for agreement.
- Advisory committee members are generally the “reflectors” not the “representatives” of affected interests. Even members nominated by their interest group cannot formally commit a group to advisory recommendations.
- Meetings of advisory committees, while they enhance the credibility of the process by being conducted in public, may adversely influence behavior of some members who are inclined to play to the crowd or media.
- Individual advisors may subvert or conceal their true views in favor of an illusion of group agreement. This “group think” often results from isolation of the group from the public or interested parties or from ineffective leadership. To avoid *group think*:
 - Promote heterogeneous group composition.
 - Steer clear of directive/authoritarian leadership.
 - Involve all group members.
- Committees may not always work well due to:
 - low salience (unimportant/peripheral issues);
 - high inertia (difficult to get started & stop);
 - committee overload (too many responsibilities); and
 - decision overload (too many attached issues).

Planning

Benefits of Community Planning

Over the past 10 years Wisconsin's population has grown by almost 10%. Between 1990 and 2015 the state Department of Administration projects that Wisconsin will add 430,000 new households, equivalent to about 1 million people. Where will those houses be built? Where should they be built? When we take a close look at our communities, whether those communities are on the edges of cities or are rural towns, we can see development in progress – more homes being built, more commercial areas constructed to serve those homes, and less farmland, open space, and wild areas. In fact, between 1980 and 1990, Wisconsin's metropolitan areas increased by 287 square miles, extending into areas that were once farms. At least one-quarter of all farmland sold during this period was diverted from agricultural use into some other use, such as residential development. If you live near any of Wisconsin's many rivers and lakes, you can see intense development occurring with the conversion of seasonal cottages to large, year round homes complete with suburban lawns and landscaping and increased demand for urban services.

One way to deal with this growth and development is through community planning. The State of Wisconsin passed a comprehensive planning law, often referred to as the "Smart Growth" law, in late 1999. In the next few pages we will define comprehensive planning, explain what planning offers to a community, and how it works in general and under the new law.

What is comprehensive planning?

Comprehensive planning is a process that results in a specific product. As a process, planning strives for an orderly, open approach to determining local needs, setting goals and priorities, and developing a guide for action. It is important to include people from all walks of life. Planning is also place-based in that the process strives to build on the unique qualities of a community. Planning produces a document, a plan, that should be used by the plan commission, elected public officials and private citizens to make informed decisions about the future of their community.

Community planning begins with learning how to care for your town, its people, and those generations yet to be born –Tom Daniels, John Keller and Mark Lapping

Myths of planning

Myth #1: Planning interferes with the economy. Planning is not an attempt to replace market forces of supply and demand. It helps shape and channel market forces by establishing certain guidelines or rules to manage development.

Myth #2: Planning will fix all our problems. Planning is not an instrument of immediate change. Planning is a reasoned trial and response process.

Myth #3: Planning will make us solve our problems. Planning is not action. A comprehensive plan can only guide decisions that lead to action.

Myth #4: A comprehensive plan will get old and out of date very quickly. Planning is not static or only accomplished once. Good planning requires continual review of accomplishments and the surrounding environment to adjust the plan in response to experience and changing conditions.

Myth #5: Planning is the same as zoning. Planning is not zoning. A sound comprehensive plan is a prerequisite for effective zoning decisions – thus zoning is subservient to planning. Zoning is one of the tools through which a plan is implemented.

What can planning offer our community?

Planning provides a framework for making decisions

Many local land use decisions are often uncoordinated in that they are made over time by a diverse group of citizens. The decisions made by these various groups will eventually evolve into a pattern of community growth. If left unmanaged these development decisions may adversely affect many aspects of the community. Planning provides continuity between successive political administrations or administrators. It provides a common framework for dealing with community change so that all interests can begin to pull together for a better community. Decision makers can avoid the “crisis mentality” that results from confronting each development proposal on an ad hoc basis. Without the unifying framework provided by planning, serious economic, social and environmental difficulties may arise. The process of planning makes local decision-making more open and democratic.

Planning defines the future character of a community by creating and maintaining a sense of place

The physical design, setting, and arrangement of land uses can make it possible for people to carry out their daily lives and activities in an attractive and interactive community environment. Land use planning and design can foster a distinctive sense of place and can help create safe environments. It can also create a town center where people can feel a part of their community. Planning and design allow a community to identify, preserve and build upon the defining features of the community.

Planning protects natural and historic resources

Planning can help protect environmental features like wetlands, waterways and forests which provide important public goods and services (such as flood water storage, groundwater recharge, clean air, recreation, tourist attractions, etc.) and which would be difficult and expensive to replace if damaged. Planning can also help preserve historic manmade structures and sites which are irreplaceable.

Planning provides a rational basis for local decisions

Plans provide a factual and objective basis to support local decision making and can be used by communities to defend their decisions if challenged in court. Planning under the comprehensive planning/smart growth law is required of all local governments by 2010 if they take any action related to land use.

Planning provides certainty regarding future development

Plans and related maps show private landowners and developers the location and type of development wanted by the community saving them time and money in putting together their plans. Planning can help to increase the consistency and

fairness of the development process for the development community as it protects the established property interests of community residents.

Planning saves money

Well planned, orderly and phased development patterns are less expensive for a community to provide with public services than low density and scattered development patterns.

Planning promotes economic development

Finally, planning can provide information on the ages and conditions of existing businesses and industries and show what kind of businesses the community needs. Planning can also indicate whether or not the work force is sufficient to staff particular manufacturing jobs and whether or not local services are adequate to handle the impacts of new economic development.

What kinds of decisions can planning guide?

We have mentioned that planning can provide a framework for making informed decisions. This means that plan commissioners can rely on the plan document in making recommendations on rezoning a property; on whether or not to expand major infrastructure, such as a sewer and water line; about the location of new infrastructure; on annexing additional territory into a village or city from a town; and whether or not major public investments are necessary. A comprehensive plan can guide commission members in making these decisions or recommendations in a rational and informed way. The *Plan Implementation* section of this Handbook discusses far more thoroughly various tools and techniques of putting the plan into action.

The first step in planning is to establish a plan commission which is discussed in the next section.

Basic Planning Process

The planning process

Once a plan commission is established and its members appointed, one of the first big questions concerning the comprehensive plan is “How do we get started?” Because the plan commission is charged with the responsibility to prepare the comprehensive plan and most plan commission members are not planners and have little knowledge of planning per se, guiding a planning process and preparing a comprehensive plan can seem a daunting task. One important tip is to: break down the planning process into feasible tasks. Figure 1 shows a generic planning process. The model shows a positive feedback loop. The first and, in some respects, the most important step, is “Decide to plan/plan for planning.” The subsequent steps are important as well, but once the public and elected officials understand the benefits and value of planning and have agreed to a process to prepare a plan, it will make the other steps far easier to carry out.

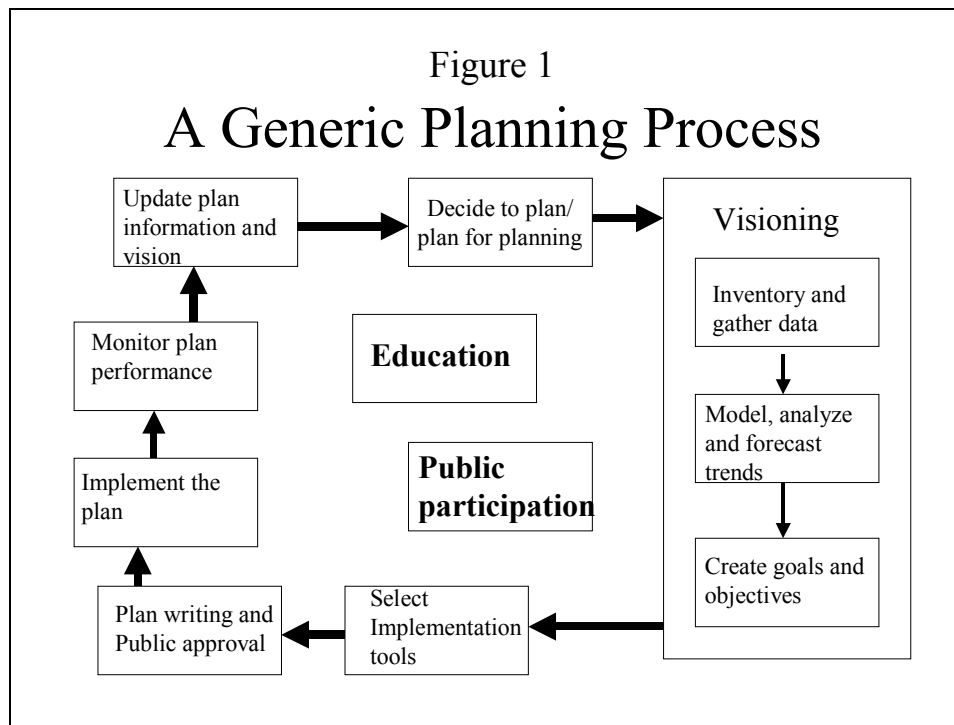
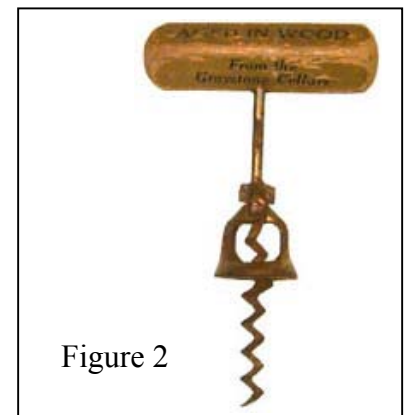


Figure 2 shows an illustration of a corkscrew as a way to conceptualize the planning process as a learning by doing process. If your community has never gone through a planning process, you will start at the tip of the corkscrew with “deciding to plan/plan for planning.” As you make your way around the planning process you are slowly moving up the corkscrew as well. When you reach step 1 again, your community will have gained experience, understanding and learned many lessons along the way that can be applied to the next planning process.

Box 1 is another generic planning process that asks five basic questions to drive the process forward.



Box 1: Five planning process questions

Another way to think about the planning process is by answering the following five questions:

- 1) Where is our community now?
 - Inventory of existing conditions
- 2) How did our community get here?
 - Trends assessment
 - Past plans and tools assessment
- 3) Where does our community want to be in 20 years?
 - Visioning process
 - Objective and goal setting
- 4) How will our community get there?
 - Identification and selection of policies, strategies, and implementation tools
- 5) How are we doing so far?
 - Evaluate our accomplishments

These five questions may make it easier for a plan commission to follow the reasoning behind the generic process. When the group begins a step, every member knows what question they are trying to answer. Thus, if you are or a consulting firm is collecting and analyzing data, the plan commission should know what question they need answered: “Where is our community now?” and “How did our community here?”

The next section will focus on the first step: establishing a plan for planning.

The Plan for Planning

How do we get started?

As discussed in 'Roles of the Commission,' a plan commission is charged with the legislative function of preparing a community's comprehensive plan. The big question that both new and experienced plan commissions ask is: how do we get started? What are the first steps in preparing a comprehensive plan? Figure 3 outlines 3 steps for the pre-planning process. This next section will walk you through these steps.

Figure 3: Pre-Planning Process

Step 1 ⇨	Step 2 ⇨	Step 3 ⇨
Basic understanding of comprehensive planning	Developing a pre-plan	Present draft "plan-to-plan" to stakeholders

Step 1: Education

Once the plan commission decides to move forward on preparing a comprehensive plan, the plan commission should educate itself, elected officials and the public about the purpose, benefits and costs, and fundamentals and principles of planning. A critical item to understand is Wisconsin's comprehensive planning law. At this early stage in the process University of Wisconsin Extension - Community Natural Resource and Economic Development educators can help in this educational endeavor.

Education does not stop here. As the plan commission proceeds through the planning process, you will continue to identify areas that you, elected officials, and the public need and/or want more information about. For example, as you look at natural resources of your community, you may want an expert to give a talk on the natural flora and fauna of the area.

Step 2: Developing a pre-plan

As you get comfortable with planning jargon and your role, the plan commission will want to start on the next step. This step can take place simultaneously with step 1. However, if plan commission members come up with lots of questions, stop to learn and understand before charging ahead.

Community readiness/ technical capacity

The plan commission should assess its community's readiness and technical capacity to prepare a comprehensive plan by asking the following questions:

- Are there any existing plans of any type, such as economic development, parks and open space?
You should gather your community's plan in one place and review them. Read through them and ask whether any recommendations remain relevant and appropriate for your community.
- What kind of technical planning capability exists in your community? For the most part, education is serving to increase your community's capacity to plan.

However, what the plan commission needs to know is who (individual or group) can do the necessary data gathering and analysis and write the comprehensive plan. Is it the plan commission, a citizen's advisory group set up by the plan commission or a planning consultant (a private firm or a regional planning commission) that has the technical knowledge and time required?

Identify purpose of planning

Answers to the following questions should help you to describe reasons why a plan will benefit your community:

- What is our comprehensive planning history?
- What are some broad topics that should be addressed in the plan?
- Will a plan help us address our needs?

Stakeholder analysis

The plan commission must discuss who should be involved in the planning process. A planning process should involve a cross-section of the public in your community to get many different perspectives on all topics under discussion. It is better to deal with conflict during the process than in the final hours when the governing body is voting to adopt the plan. Appendices 1 and 2 ask several questions related to community stakeholders. Below are a few questions that you will find in the attached worksheets.

- What groups or organizations should be involved in the planning process?
Are there any individuals that should be invited specifically?
- How will we involve these stakeholders in the process?
- Do all stakeholders need to be involved at the same time? For example, do all possible stakeholders need to be involved when discussing housing issues?

By understanding which involving groups and organizations, and individuals have a stake in the planning process, the plan commission will begin to engender trust in stakeholders and the community at large.

Decision-making process and standards

Many organizations and groups including plan commissions often forget or ignore careful consideration of the decision-making process and standards for good decisions. Organizations ignore decision-making at their peril. A transparent process is critical so that the public and anyone else can understand how the plan commission makes its decisions. It is important to have a written policy on decision-making that all members can refer to when necessary and so that new members can understand the decision-making process as well. The plan commission should decide the following questions:

- How often does the plan commission want to meet and for how long?
- How will we make decisions? (Majority vote? Consensus?)
- Are there any rules of conduct we should follow?
- Do members need to attend a certain number of meetings to be eligible to vote?

By discussing and deciding on these details and others in *Appendix 1: Pre-planning worksheet*, the planning process will run more smoothly and efficiently than without these policies in place.

Once the plan commission has discussed and made decisions on community readiness/capacity to plan, purpose of planning, stakeholder involvement and has established a decision-making process, it is a simple matter to prepare a short report. *Box 2* provides final questions a plan commission should answer and presents a suggested table of contents for a *plan for planning* document.

Box 2:

A Few Final Questions

- Who is going to use the plan and how are they going to use it?
- Do you need an altogether new plan?
- What geographic area should be covered?
- Have you explored the possibility of cooperative planning with neighboring communities?
- What should the form, content, and appearance of the plan resemble?
- Who should prepare the plan?

A Plan for Planning - Table of Contents

- I. Our community's purpose for planning
- II. Our educational needs regarding comprehensive planning
- III. Our readiness and planning capacity
- IV. Involvement of stakeholders and the community
- V. Our decision-making policies

Step 3: Present draft *Plan –to plan* to stakeholders

The final step involves presenting a draft *plan to plan* to stakeholders and elected officials who will be involved in the planning process. This helps develop buy-in (acceptance of decisions to be made in the process) and allows for any needed amendments to be made. For example, dates or times are often changed to accommodate certain stakeholders or participants may volunteer to perform specified roles for the planning process, such as recording secretary or newsletter editor.

This *plan for planning* document and its process will serve the plan commission well over the months that follow as they move towards the next steps in the planning process.

Appendix 1: Pre-planning worksheet

1. What is the purpose of the planning effort?

2. What are some broad topics that should be addressed in the plan?⁶⁵

3. What needs will the plan help us to address?

4. Who are the stakeholders that should be involved in the process?

5. What will be the role of each stakeholder group? When will each be involved?

6. Who will provide technical assistance to develop the comprehensive plan? Does the community have the skills or will it need to hire a planning consultant?

7. Who will chair the planning process, perform secretarial duties, etc.?

8. What policies will we use to make decisions?

9. What are our committee's rules of conduct regarding attendance, meeting protocol, etc?

10. How often do we want to meet? For how long? Do we want to have set dates and times?

11. What are the community's educational needs with regard to comprehensive planning (information on plan topics, data, trends)?

Source: Koles, Mike. 2001. Preparing for the Comprehensive Planning Process. University of Wisconsin Extension Publications, G3747.

Appendix 2: Community Diagnosis Worksheet

NOTE: *Community diagnosis is a good first step to work on with your UWEX county faculty to understand your community and to begin developing an effective education program for comprehensive planning. This worksheet is a tool to help you carry out the community diagnosis process. Make judgments that you are comfortable with in completing this exercise and recognize the shortcomings of your information or experience.*

Stakeholder Analysis – Stakeholder analysis appraises institutions and analyzes the community through its players. The analysis involves the identification of a project's key participants, an assessment of their interests, and the ways in which these interests affect project success.

1. ____ Identify local stakeholders that will (or should) affect local planning in some way. Use your own judgment. Ask for input from local officials, and community leaders and activists. Make sure you identify potentially affected groups and their interests. Because of the land use component of comprehensive planning, make sure you include residential and other property owners.
2. ____ Determine/Draw out stakeholder interests. You can do this by asking stakeholders how the plan may affect them or by asking probing questions. Why are plan development and/or implementation important to a given stakeholder? Think in terms of the tangible and intangible benefits/costs of planning.
3. ____ Identify how each stakeholder relates to plan success. What positive benefits does each stakeholder realize from the successful adoption and implementation of the comprehensive plan? What changes might a stakeholder have to make if plan is adopted? *NOTE: This determination is often difficult at the beginning of a plan process, when data has yet to be collected, data and trend analysis has yet to be performed, and planning goals and related implementation strategies have yet to be developed or adopted. However, perceptions are particularly important at this stage of the process when you are trying to build momentum and support for planning.* What conflicts or damage may result for different stakeholders from plan adoption and implementation of strategies related to their interests?
4. ____ Explore what coalitions of interest may exist. In addition to analyzing each stakeholder's individual interests, look for interests and issues that different plan process participants may share.
5. ____ Ask stakeholders to identify their interests in participating in the process and otherwise assess stakeholder opportunities for participation in the process of developing, adopting and implementing a comprehensive plan.

Understand a Community's Development History – This analysis includes:

1. ____ Basic characteristics & trends in population. Because there are huge amounts of statistics available, limit your initial community data profile to a few key indicators of change such as:
 - a. ____ Total Community Population for 1970, 1980, 1990 & 2000 plus available projections for 2010 & 2020. *If additional historical data is available for 1960 and earlier decades, this provides a good basis for understanding the community. For example, many communities that based their early development on resource extraction and related manufacturing had larger populations 100 years ago than they do now. Try to understand how local drivers/incentives for community planning and development have changed over time.* SOURCE: U.S. Census
 - b. ____ For towns and counties, some population counts, such as the 1990 Census, include numbers for urban & rural populations, and farm and non-farm populations. *It's always striking that farms, from a land use perspective, may account for 80 percent of the land in a rural town, but people living on farms may only constitute 10 to 12 percent of the household population for the same community. This disjuncture affects local politics, public discussions about who to include in planning, etc.; look for unbalanced relationships like this between people, control of key resources, and representation in the local planning discussion.* SOURCE: U.S. Census
2. ____ Basic changes in land use, development, conservation and services/infrastructure in the last 5 to 20 years. Your best sources of such changes are local citizens, officials, development-related professionals, and your own eyes. Start with informal surveys of local and county "experts," such as the county zoning administrator. *HINT: If a land use map is available, that's a few years old, take an afternoon to do a windshield survey of the community; make comparisons between the picture on the map and what you see out your window. State agencies have various sorts of historical inventories that may be useful (wetlands, forested lands, highways, etc.)*
3. ____ Form of local government. Town, village, city or county.
4. ____ What land use regulations are administered in the jurisdiction and by whom? In Wisconsin, this can be a complicated question, but one that deserves your time and attention. In the case of a town, for instance, the community may 1) administer no local regulations, 2) have adopted village powers and administer its own zoning & subdivision ordinance while the county administers state mandates for shoreland, wetlands, etc., or 3) function under county comprehensive zoning ordinance.

Analyze Community's Planning History/Current Issues

1. ____ Has your town ever developed and/or adopted a community or special purpose plan of any kind? If so, what? When? What are the basic goals and

implementation strategies identified in the most recent plan? What progress towards implementation was made towards these strategies and goals? *HINT: This information can be used to underscore opportunities and limitations inherent in long-range planning and implementation.*

2. ____ Other studies, strategies, resource mapping projects, etc.? This is all grist for the planning mill, and good background for you as you diagnose the community. If you have the time, read and analyze all of these documents. What's changed in terms of the focus of community planning over time? What basic points would you want community members and leaders learn from these materials?
3. ____ What are the key issues driving current local interest in planning? These "drivers" can vary widely, depending on the community in question, or the person you're talking to in that community. Look for the points of consensus and conflict among the drivers.
4. ____ What is the quality of the communication and cooperation between local units of government and other local organizations? Between local units and county government? Options for intergovernmental cooperation are embedded in our state laws, but planning and regulatory issues are area wide. The quality of inter-municipal relationships is critical to the quality of plan development. The level of inter-governmental integration in comprehensive planning has everything to do with the quality and efficiency of plan implementation. A related point: What are the problems in the relationships as defined by the different players?

Diagnose Local Understanding/Support for this Community Planning Project

1. ____ Why and how do local officials support community planning at this time:
 - a. ____ Statements of support?
 - b. ____ Adoption of citizen participation plan under comprehensive plan law?
 - c. ____ Allocation of budget resources?
 - d. ____ Other personnel or technical resource allocations/acts of officials?
 - e. ____ Less formal indications
2. ____ Are citizen groups, others supportive (aware?) of a local planning project? How? Why?
3. ____ Where do town officials and others think they are in the process? This is a critical question. Plan commission members and county Extension staff must be sensitive to local perceptions of planning in eliciting support for and making plans for the process.

Shared Visions & Values

1. ____ To what extent have shared visions and values been explored, defined and shared related to:
 - a. ____ Planning?
 - b. ____ Development?

- c. ____ Conservation of shared resources?
 - d. ____ Community quality of life?
2. ____ What mechanism or process was used to draw out, record and express local visions and values? How long ago did this occur? Hint: There is no such thing as an old vision. The process of developing a current local vision is worth as much as the content of the vision.

Levels of Consensus – What are the levels of local consensus regarding:

- 1. ____ Values related to planning, development, conservation and regulation?
- 2. ____ Key planning challenges including knowledge of planning law, knowledge of planning process, structure and content, etc.

Readiness to Start Planning

- 1. ____ Is the community politically ready to start a comprehensive plan?
- 2. ____ What do they need to know that isn't covered in other portions of the Community Diagnosis process (technical and financial capacity ,etc.)?

Plan Implementation Tools

General Strategy

Once the plan is adopted, a strategy for implementation is essential. The strategy should be as broad-based and inclusive as locally possible. General strategy for each tool is discussed, as well as, their administration, their perceived advantages and disadvantages, and who typically should implement. Descriptions are by no means exhaustive and may not be completely applicable to each specific situation. If unique, local situations seem to contradict these discussions, please feel free to relate that situation to UWEX county staff.

Before any new implementation strategy, tool, or technique is enacted, the local government should make every effort to educate its citizens regarding their comprehensive plan, the elements contained within it and how it may affect their well being. To get the word out, local newspapers, radio and television, the library and local schools can be of great assistance. Please see the Public Participation discussion on page_27_for more details.

Public education allows citizens to understand the basic philosophy behind the plan and establishes a level of plan legitimacy. Participants in the planning process are often the plan's best community ambassadors, by serving as advocates in formal and informal community discussions.

The new law describes the minimum elements of the comprehensive plan. If local governments wish to take advantage of state grant programs, then there are additional goals that the comprehensive plan must address. Other state mandates should be incorporated into existing plan and plan implementation tools. All local land development controls must not only have a connection to the comprehensive plan, but they must also be compatible with state mandated regulations.

The Tools

A community should not rely upon only a few tools to implement their plan. Effective community planning involves multiple tools, coordinated, multi-level administration, and consistent enforcement. All implementation tools must have a common grounding in the plan and must be consistent with the appropriate portions of the plan. Several plan implementation tools are described below. All control the use and development of public and private land, and will affect local, private property rights.

Zoning Ordinance

A zoning ordinance is perhaps the most common method used by local governments to implement their plan. Zoning separates conflicting land uses, preserves valued environmental features, ensures new development is located according to the comprehensive plan and promotes quality development which will not harm the public health, safety and general welfare.

Zoning represents a balance between individual property rights and rights of the general public to a healthy, safe, and orderly living environment. A tight, consistent connection to the stated goals and objectives of the comprehensive plan must exist. Restriction on private property must be based on a well-reasoned, desired future community vision, as it is described in the comprehensive plan.

General strategy. Over seventy years of judicial zoning case law exists. Communities have grown to accept zoning as a valid method of controlling growth and change. The objective of zoning is to locate land uses in areas that are environmentally, economically, socially compatible with the intent of the zoning district and to spatially separate incompatible land uses from each other. A local governing body enacts zoning ordinances. An official zoning map based on the community comprehensive plan defines each zoning district. Each district allows two general classes of land use. Specified *permitted uses* are allowed anywhere in the district provided, construction standards are followed. The other class of land use is the *conditional use* (also know as *special exception or zoning exception*). This class of use, in and of itself may not be objectionable, but in the context of the particular zoning district, certain specified design criteria and/or performance standards are set forth as conditions of approval, after a public hearing and review on the conditional use by a local decision-making body.

Administration. The comprehensive plan map and the Official Zoning Map must be compatible. The correspondence need not be exact. The zoning map may contain less intensive use categories such as agricultural or low density residential classes as holding zones for undeveloped or under developed areas, but not more intense uses.

A land use permit is generally required prior to construction or expansion. If the proposed use is not a permitted or conditional use, the parcel must be *rezoned* to a zoning district in which the use is allowed. Rezoning requires a public notice and a hearing before the local zoning agency and approval of the local governing body.

Advantages. A zoning district map can provide a picture of future development patterns for a community if regulations are rigorously administered and the underlying data and assumptions in the local land use plan are accurate and reflect a widely shared community vision.

Limitations. Zoning often describes *minimally acceptable development standards*. Integration of several plan implementation tools is generally necessary to encourage compatibility of private development desires and the community comprehensive plan goals.

Implementing unit. Counties, towns (with village powers), cities and villages all have zoning authority under specified conditions.⁶⁶

Subdivision control, condominium plats and land division ordinances

Local government can control the division of land. Subdivision and land division regulations provide the procedures and standards for dividing larger parcels into smaller parcels to protect the public health and safety, preserve natural resources, and create a more desirable environment within which to live under the general police powers. The standards may govern any aspect of a subdivision, such as lot sizes and shape, access, road widths, tree plantings, and sidewalk placement, as a condition of approval in order to record the land division or subdivision. All standards must be in writing.

General regulatory strategy. Subdivision control standards complement zoning as a plan implementation tool, by prescribing specific guidelines for road widths, curb and gutter, storm sewer, and other utility sizing and locations, utility easements, required grading, street tree selection and spacing and other related design issues that are not found in zoning regulations. Specific language in the ordinances should reflect the objectives of the comprehensive plan.

Administration. At a minimum, any local land division regulations shall meet the platting specified requirements⁶⁷. Such regulations of the division of land are different from zoning ordinances, which regulate the general use of land. Since there normally is some overlap (*i.e.*, lot sizes and setbacks) both must be closely compared to ensure their compatibility with each other and the comprehensive plan.

Advantages. Subdivision control can be a useful and long lasting tool to implement the plan by regulating how new developments are laid out, including streets, sidewalks, and utilities. Subdivision standards set the future community development pattern and ensure that the development pattern is consistent with the comprehensive plan. Subdivision controls will ensure the adequacy of schools, parkland, sanitary sewer collection systems, public water distribution systems, storm water collection systems, public transportation systems and the street network in new developments.

Limitations. These ordinances are passive in nature. The community must rely upon private sector initiatives for subdivision ordinance standards to be effective. The standards cannot be applied, after the fact, to existing subdivisions.

Implementing unit. A city or village may apply these standards to the unincorporated areas, which are within their extraterritorial jurisdiction. Cities, villages, and towns (with village powers) with their own subdivision ordinances need not gain county review and approval of any plat petition.

Official Map

An official map provides the framework for the public endorsement of facilities identified in the comprehensive plan. The adoption of the official map by the city, village or town establishes an official street network, classifies the streets, shows all anticipated future streets, and optionally includes the identification of historic districts, parks and playgrounds, railroad rights-of-way, public transit facilities, and waterways (only if they are part of a comprehensive surface water drainage plan).

General strategy for planning of specified improvements. By adopting an official map, a local government may prohibit the issuance of new building permits within the areas identified. The official map can add detail to the comprehensive plan and it must be compatible with the plan. The official map can also provide more definition to specific applications of the subdivision control ordinance.

Administration. No building permit may be issued for new construction or expansion of any building or structure that does not conform to the location standards of the official map.

Advantages. The official map can serve as a guide for all future public acquisition for parks, recreation and open space, streets and other transportation systems; and all future public historic preservation activities.

Limitations. The detail of the official map items are frequently more than what a typical plan would contain. The map may require other regulatory measures to implement certain of its aspects, such as an historic district ordinance.

Implementing unit. Cities, villages, and towns all have the authority⁶⁸ (to adopt an official map by ordinance or resolution, and for towns located in counties, which have not enacted a county zoning ordinance⁶⁹.

Local building codes

Building codes have been developed nationally to standardize minimum requirements for new construction, repairs and additions. Building codes ensure the health, safety and welfare of the public, have a very strong fire safety orientation, and include electrical, plumbing, heating ventilation and air conditioning (HVAC), mechanical and building codes.

General strategy. Building codes are the last level of regulation before new construction commences. All the good intentions of the comprehensive plan, the zoning ordinance and other regulations are for naught if the building codes are not rigorously enforced with these other review standards.

Advantages. All the detail involved with the plan, zoning, subdivision control and site planning are focused on the building permit process. The building official now has the benefit of all other reviews and can make decisions based on both the building code and plan implementation tools.

Limitations. Building code administration is often not coordinated with the comprehensive plan. The authority to enforce the two ordinances comes from different state enabling acts, with different priorities and review processes.

Implementing unit. The building official of the local governmental unit is responsible for building code enforcement.

Capital Improvement Program (CIP)

Each municipality adopts an annual budget, which guides how and for what purpose monies will be spent for that fiscal year. CIPs are part of the annual municipal budget. They would include, but are not limited to: major expenditures for police and fire protection, major street repairs and new construction, major repairs and new construction for sanitary sewers, public water collection and distribution systems, storm sewer collection and parks, recreation and open space. Land acquisition is part of the CIP.

General planning strategy. The CIP lists all needed projects for the next four to six years and prioritizes each project. Projects with high priorities are funded first. Local governmental elected officials then can fund capital projects and implement the comprehensive plan. Private investments tend to follow major public expenditures in new construction and improvements to existing streets and utility infrastructure.

Administration. Prioritization of CIP projects involves availability of public funds. CIPs often cost more than the local government can reasonably be expected to collect in a single fiscal year. For costly projects a local government has a few alternatives: save money for a few years until sufficient funds are on hand; spread construction and payment of the project over more than one fiscal year; or sell general obligation or revenue bonds and use the proceeds from the bond sale to finance new construction. CIP funding can also be obtained from the creation of special assessment districts.

Advantages. The CIP process allows local governments to properly budget for expenditures of projects identified in the comprehensive plan and set a general timetable for project implementation.

Limitations. Its priorities may not be driven by the planning goals and objectives, but by political and economic realities. Thus, local officials must embrace the planning objectives dealing with capital improvements before they can be implemented.

Implementing unit. The elected officials of all general purpose local governments ultimately adopt an annual municipal budget, of which the CIP may comprise a significant portion.

Special assessment districts such as inland lake protection and rehabilitation, and sanitary districts, tax increment finance districts, and business improvement districts have annual budgets. Their budgets are normally under a special heading in the local governmental budget because the funds for these districts must be collected and administered separately from general tax revenues.

Site Plan Review

The Plan Commission often receives referral items on new developments for which they must provide comments and approval.

Regulatory strategy. Site plan review may involve private development or may include standards for all conditional use permits as well as the location and architectural design of any public building, the location of any public art, the location, acceptance, change of use, sale, or acquisition of land for any park, playground, street, alley or other public right-of-way, airport, parking facility or other public facility, the location, extension, abandonment or authorization of any public utility, the location, character, and extent of acquisition, leasing or sale of lands for public or semi-public housing, slum clearance, relief or congestion or vacation camps for children, or other matters specified by statute or ordinance for referral (i.e., business improvement districts or group homes). Specific review procedures and standards should be identified in the zoning ordinance.

Administration. Staff reviewing the site plan proposal may include representatives of the police and fire departments, engineering, utilities, parks and recreation, forestry, and planning or community development. Only when all of the staff comments have been satisfactorily addressed, should the petition be approved.

If the site plan involves a variance or a conditional use, the plan commission or a zoning board of appeals/adjustment may impose certain conditions and safeguards as conditions of approval. In all other cases, if the petition meets the standards described in the zoning ordinance, approval must be given.

Advantages. Site plan review shapes new development and redevelopment of older areas into compliance with the plan. With a site plan approval the zoning administrator or building inspector will have clean and definite criteria from which to review any building permit application. Standards outlined in the zoning ordinance will be the criteria to evaluate all plan referrals.

Site Plan review standards complement zoning district standards and give Plan Commissions and staff clear and consistent standards, from which to make objective reviews. The standards act in tandem with subdivision control standards and regulate development not involving subdivisions.

Limitations. This is another level of local review. There is an administrative cost involved with the review. It can be recovered through imposing review fees on the petitioner. It is time consuming, but it does ensure compliance with any local zoning and other ordinances.

Implementing Unit. Counties, towns (with village powers), cities and villages that have local home rule authority can implement site plan review within their zoning ordinance.

Design Review

Situations may present themselves, when the community may wish to protect certain areas or neighborhoods from development, which might detract from their appearance and may negatively affect property values. Such areas could include an historic downtown or entryway into the community. In such cases certain additional, more detailed, standards addressing exterior appearance may be warranted.

Design review strategy. The review involves the regulation of the design of buildings and the premises. It is separate and should not be confused or substituted for building code review to obtain a building permit. It may be part of a site plan review. Often consultants are retained to develop design standards for very specific situations, such as historic downtown building facades or commercial corridor revitalizations.

Administration. If a local government has both site plan review and design review procedures within its zoning ordinance, it should have separate standards and checklists for both. Procedures for both a site plan review and a design review should be identical, except that an additional step may be included in the design review, if the building is within an historic district commission or a downtown development authority.

Advantages. Like the site plan review, a design review process is an excellent tool to implement the plan. Development petitions, which detract from the sense of place the community that the community would like to foster, or which detracts from the appearance of its surrounding neighborhood or would have a negative effect on property values can be regulated.

Examples of using design review standards could include: building permits for historical residences in an historic preservation district, building permits for commercial buildings in a downtown development (or historic) district, or building permits for commercial or industrial buildings in a business park.

Design reviews are particularly effective tools to implement small area design within the context of the community comprehensive plan. Downtown or residential historic districts are prime examples of plan implementation of a small area scale. Others could include lake front development, river or harbor redevelopment opportunities and commercial corridor revitalization programs. In short, any area, district or neighborhood, for which special consideration or standards are suggested in the plan, can and should be subject to a design review by the plan commission.

Limitations. There is not express authority in Wisconsin law for local governments to establish design review. However, earlier Wisconsin Supreme Court decisions have strongly endorsed the concept. The review could include but not be limited to building height, exterior materials and colors, building mass, fenestration, entryway, and the like. The National Trust of Historic Places and the National Main Street Center have developed easy to understand standards for such reviews.

Implementing Unit. Design reviews are part of the zoning ordinance and implemented by the zoning administrator or building inspector.

Fiscal Impact Analysis

Local governments wish to avoid unnecessary costs, directly and indirectly attributed to private development initiatives. Fiscal impact analysis assesses the financial status of the local government in relationship to the financial affect of a development proposal on the community. A system to objectively estimate the incremental costs associated with new development petitions should be developed and periodically re-assessed and calibrated. Costs associated with any private development initiative borne by the local government must be identified and passed on to the direct beneficiaries of the development by means of an impact fee assessment or by other means.

General regulatory and planning strategy. As a condition of approval local governments can impose an impact fee on a private developer. The fee structure must be premised on an objective analysis. The study would analyze all public costs associated with new development and develop a schedule of fees that a private developer must pay.

Many communities are experiencing a large, and growing, funding gap for public infrastructure investments. Imposition of impact fees attempts to shift the burden from public sources to those who directly benefit from the projects, making new, private development responsible for supporting itself, rather than relying on local tax dollars. There must be a direct and logical connection between the fees imposed and the size and type of development subject to the impact fees.

Local governments, but not counties, can impose impact fees to finance highways, streets and other transportation facilities. Other public utility systems, recreation and open space facilities, solid waste and recycling systems, police, fire and emergency medical facilities, and libraries can be included in an impact fee program.

Developers, contractors and the general public can be educated regarding the impact fee structure and assessment procedures with maps and sketches showing preferred locations for development and design criteria. If a development proposal analysis demonstrates that utility improvements or extensions are needed, then a condition of approval may require a financial contribution toward or actual construction of public utilities. Density bonuses or other similar incentives can be part of this approach.

Advantages. Once the systems are in place, and private developers are educated regarding the process, these regulations can establish a constructive dialogue between developer and the public. Costs and fees will be known up front and if needed public utilities and services are not in place, a process is in place to identify who and when the utilities and services will be brought on line.

Limitations. Imposing review fees on the petitioner is time consuming, but it does ensure local governmental budgeting and finances are not negatively affected by development proposals and plan compliance.

Implementing unit. Counties, cities, villages and towns can impose reasonable development fees as described and limited under the present law.⁷⁰

Purchase of Development Rights (PDR)

A landowner agrees to sell the rights to develop his or her property to a local government, land trust or DNR. The development rights to a piece of property can be separated from the bundle of rights that go with the land. With the sale of that development right, a conservation easement is put into effect which restricts development in perpetuity. The value of the development right is determined by the difference between the market value and agricultural value of the farmland.

General Strategy. Local government or land trust must determine how to buy development rights, bonds, impact fees, additional levy on property are some possibilities. A local ordinance designates how funds are to be allocated and which agency will operate the program.

The PDR agency drafts program regulations and guidelines and selects criteria for making decisions on appropriate land to preserve. The PDR agency solicits and receives applications and ranks them.

An appraisal of the development rights is conducted by an independent appraiser.

Advantages.

- Seller gets sale price and possibly property and estate tax reduction.
- Voluntary and permanent means of land use control.
- Avoids property rights outcry that zoning can elicit.
- Equitable method of containing sprawl, protecting valuable farmland and open space.
- Property is retained on tax rolls and is privately owned and managed.
- Can separate funding and managing conservation easements from administration of program.

Limitations.

- Substantial acquisition costs involved.
- Can result in scattered preservation if only some landowners participate.
- Property owners may not donate development rights if they know they can be paid.
- Can undermine the power of regulation by creating incentive-based expectations.
- A challenge to administer and find funds.

Transfer of Development Rights (TDR)

This tool is similar to a PDR program in that the property owner agrees to separate his/her development rights from the bundle of rights that go with the land and a conservation easement is put into effect. Rather than the local government purchasing the development rights to a property, a TDR program transfers the “rights to develop” from one area to another. The property owner still sells his or her development rights, but those rights are bought by a developer. In turn, the developer can use those development rights to create a denser subdivision, for example.

General Strategy. To use TDR, a community must have a comprehensive plan in place. The plan designates sending and receiving areas. The components of a TDR program include a preservation zone, a growth area, a pool of development rights, and a procedure for transferring development rights.

The “rights to develop” are transferred from one area – a “sending” or preservation area - to another – “receiving” or development area. The costs of purchasing the easements are recovered from developers who receive the building bonus.

Advantages.

- Provides certainty about where development will happen
- Creates incentive for developers to buy development rights rather than the local government needing to find a source of funds to purchase them.
- Allows higher density (developer incentive) than zoning ordinance might allow.
- Creates a competitive market between sellers and buyers.

Limitations.

- Lack of community willpower to designate a “receiving” area.
- Misconceptions about the concept of density and meaning of “higher” density.
- Program depends on a stable and predictable real estate environment.
- A consensus is necessary to place conservation easements on agricultural areas while allowing for an increase in development densities or “bonuses” in other areas.
- Can be a challenge to administer.

Technical Assistance Programs

State, federal and local agencies provide educational, technical assistance and incentive programs, which can complement local governments regarding plan implementation. The Wisconsin Department of Natural Resources administers programs in the areas of shoreline restoration, forestry best management practices, construction site erosion control and storm water management. These educational, technical assistance and incentive programs often indirectly influence local governments by suggesting certain preferred development patterns, optimal land use for specific areas, and standards for best management practices for subdivisions and urban development.

Local governments should strongly consider these potential resources that are available to them. While they are often single-purpose programs, local government should work with the appropriate agencies and evaluate their suggestions with the greater comprehensive community plan in mind.

Other Planning Initiatives

Several other planning initiatives may be of benefit to local governments. They include, but are not limited to disaster relief, floodplain mitigation and brownfield revitalization.

Disaster relief. Rebuilding after a flood, tornado, earthquake, hurricane or landslide will either continue the status quo or bring the community up to a higher standard. Before the reconstruction begins, local officials should evaluate their efforts in light of the adopted comprehensive plan and determine if there are opportunities to implement the plan in those areas affected by the disaster.

Floodplain mitigation. More often than not a local community will find that it is more cost effective to purchase and relocate private property damaged in a flood, as opposed to rebuilding on-site. As these types of opportunities present themselves, local governments may opt to purchase flood-prone lands within a given river corridor to reduce private suffering, remove floodway constrictions, lower local flood contours, and begin to develop, less intense, community-oriented activities and facilities in their place.

Brownfield revitalization. Brownfields are abandoned, idle or under-used industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. In cities landlocked by other cities these brownfield sites represent the only opportunity to grow. For non-land locked communities they are the dilapidated, derelict building that sits idle or under-used and detracts from the community. In both cases the revitalization of brownfield sites will require a strategy. It is the responsibility of the local government to ensure that the revitalization strategy is complementary to and implements the comprehensive plan.

Many Wisconsin municipalities have adopted the implementation tools listed above. **Other ordinances** related to new development and change could include, but not be limited to sign ordinances, historic preservation guidelines and ordinances, downtown business improvement districts and other special purpose districts.

With the new "Smart Growth" planning law, local governments should evaluate a whole host of more innovative plan implementation tools. They can now include

urban service districts, storm water management plans, public utility service limits or urban growth boundaries, and agricultural and natural feature preservation regulations. These approaches may involve developing intergovernmental agreements with surrounding local governments, cooperative boundary agreements, which in turn may create future annexation agreements and mutual revenue sharing agreements.

Resources for Plan Commissioners

Publications

Guide to Community Planning in Wisconsin. 1999, 275 pp.

Brian W. Ohm

Source: UW-Extension Publishing, (608) 262-2655 or at

<http://www.lic.wisc.edu/shapingdane/resources/planning/library/book/contents.htm>

Cost: \$20.00

How to Hire a Planning Consultant: A Guide to Preparing a Request For Proposals. 2001, 56 pp.

Anna Haines, Merritt Bussiere and Kassandra Walbrun and Jonquil Wegmann Johnston

Source: Center for Land Use Education, (715) 346-3783 or at

http://www.doa.state.wi.us/olis/pdf_files/rfpguide.pdf

Cost: \$3.00

The Job of the Planning Commissioner. 3rd Ed., 1987, 198 pp.

Albert Solnit

Source: APA Planners Press. May be ordered at libraries and

bookstores or at <http://www.planning.org/store/overview.htm>

Cost: \$27.95

The Small Town Planning Handbook. 2nd Ed., 1995, 305 pp.

Thomas L. Daniels, John W. Keller and Mark B. Lapping

Source: APA Planners Press. May be ordered at libraries and

bookstores or at <http://www.planning.org/store/overview.htm>

Cost: \$43.95

Zoning Board Handbook For Zoning Boards of Adjustment/Appeals.

2001, 50 pp.

Michael D. Dresen & Lynn Markham

Source: Center for Land Use Education, (715) 346-3783 or at

<http://www.uwsp.edu/cnr/landcenter/pubs.html>

Cost: \$3.00

Websites

http://www1.uwex.edu/ces/index.cfm	UW Cooperative Extension
http://www.uwex.edu/ces/landcenter/	UWSP Center for Land Use Education
http://www.planning.org/	American Planning Association
http://www.uwex.edu/lgc/	UWEX Local Government Center
http://www.dnr.state.wi.us/	WI Department of Natural Resources
http://supct.law.cornell.edu:8080/supct/	United States case law

- **Due Process**

- Planners Web, Planning Commissioners Journal:
<http://www.plannersweb.com/articles/primer.html>
- Planning Law Primer, Procedural Due Process in Practice:
<http://www.rc.com/Publications/Dueproc.htm>

- **Ethics for Government Officials**

- AICP Ethical Principles in Planning:
<http://www.planning.org/abtaicp/ethics.html>
- AICP Code of Ethics and Professional Conduct:
<http://www.planning.org/abtaicp/conduct.html>

- **General Planning Information**

- AICP Public Information News and Fundamentals:
<http://www.planning.org/info/infoguid.html>
- List of Wisconsin State Agencies:
http://wisconsin.gov/state/core/agency_index.html
- 1000 Friends of Wisconsin:
<http://www.1000friendsofwisconsin.com/>
- Other Useful Wisconsin Links:
<http://www.doa.state.wi.us/olis/links.asp>

- **Historic Preservation**

- Historic Preservation and Smart Growth:
<http://www.shsw.wisc.edu/histbuild/smartgrowth/index.htm>

- **Housing**

- Guide to Preparing the Housing Element of a Local Comprehensive Plan:
<http://www.wisc.edu/urpl/people/ohm/projects/housingf/index.html>
- Wisconsin Housing and Economic Development Authority:
<http://www.wheda.com>

- **Intergovernmental cooperation**

- Municipal Boundary Review:
http://www.doa.state.wi.us/olis/boundary_review/boundary_review.asp
- Division of Housing and Intergovernmental Regulations:
<http://www.doa.state.wi.us/dhir/index.asp>

- **Natural resources**

- A Guide to Including Natural Resources in Local Comprehensive Planning:
http://www.dnr.state.wi.us/org/es/science/landuse/smart_growth/urbplan_bk.pdf
- Wisconsin Department of Natural Resources
 - Wetlands:
<http://www.dnr.state.wi.us/org/water/fhp/wetlands/index.htm>
 - Floodplains:
<http://www.dnr.state.wi.us/org/water/wm/dsfm/flood/title.htm>
 - Shorelands:
<http://www.dnr.state.wi.us/org/water/wm/dsfm/shore/title.htm>
 - Wildlife:
<http://www.dnr.state.wi.us/org/land/wildlife/harvest/harvest.htm>
 - Drinking water and groundwater:
<http://www.dnr.state.wi.us/org/water/dwg/>
 - Forestry:
<http://www.dnr.state.wi.us/org/land/forestry/>
 - Metallic mining:
<http://www.dnr.state.wi.us/org/es/science/mining/>
 - Remediation and redevelopment:
<http://www.dnr.state.wi.us/org/aw/rr/>
 - Stewardship land acquisition program:
<http://www.dnr.state.wi.us/org/caer/cfa/lr/stewardship/stewardship.html>
- Central Wisconsin Groundwater Center:
<http://www.uwsp.edu/cnr/gndwater/>
- Wisconsin land trusts:
<http://www.gatheringwaters.org/>

- **Transportation**

- Transportation Planning Resource Guide for Local Comprehensive Planning: <http://www.dot.state.wi.us/dtim/bop/pdf/transportation-guide.pdf>
- Transportation Planning:
<http://www.dot.state.wi.us/dtim/bop/planning-index.htm>
- Rustic Roads:
<http://www.dot.state.wi.us/dtim/bop/rustic-index.htm>

Endnotes

¹ *Cushman v. Racine*, 39 Wis.2d 303 (1968); *Heaney v. Oshkosh*, 47 Wis.2d 303 (1970)

² City statutes in s. 62.23 Stats. are applicable to villages via s. 61.35 Stats. and towns with village powers under s. 60.62 Stats.

³ s. 59.69(2)(a)1, Stats. The county zoning agency which considers zoning amendments can be either a planning and zoning committee of the county board or a planning and zoning commission consisting wholly or partially of persons who are not members of the board.

⁴ ss. 985.07 & 985.01(1), Stats. A Class 2 notice requires 2 newspaper publications, at least once each week for consecutive weeks, the last at least one week before the act or event.

⁵ s. 59.69(5)(e)2, Stats. When the zoning agency receives a petition to amend a county zoning ordinance it shall call a public hearing via a class 2 notice (under ch 985) and send a copy of the notice by registered mail to the town clerk of each town affected by the proposed amendment at least 10 days prior to the date of such hearing. s. 62.23(7)(d)2, Stats. Amendments to any existing zoning requires publishing a class 2 notice of the hearing and providing at least 10 days' prior written notice of such hearings to the clerk of any municipality whose boundaries are within 1000 feet of any lands included in the proposed plan and regulations.

⁶ s. 59.69(5)(e)2, Stats. Section 59.69(6), Stats. states that public hearings may, but are not required to, be held before the county board.

⁷ s. 62.23(7)(d)2

⁸ ss. 59.69(5)(e)3 & 59.69(5)(e)3m, Stats.

⁹ s. 59.69(5)(c), Section 59.692(2), Stats. states shoreland ordinances and amendments do not require approval nor are subject to disapproval by any town or town board.

¹⁰ s. 59.69(5)(d)

¹¹ s. 59.69(5)(e)5g, Stats. For county ordinance amendments, the protest must be signed and acknowledged by owners of 50% of the land to be altered or by owners of 50% of adjacent land. s. 62.23(7)(d)2m, Stats. For amendments to city, village or town ordinances, the protest must be signed by the owners of 20% or more either of the areas of land included in such proposed amendment, or by the owners of 20% or more of the area of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20% or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land.

¹² s. 59.02, Stats.

¹³ s. 59.69(5)(e)3, Stats. If a town affected by the proposed amendment disapproves of the proposed amendment, the town board of the town may file a certified copy of the resolution adopted by the board disapproving of the petition with the agency before, at or within 10 days after the public hearing. If the town board of the town affected in the case of an ordinance relating to the location of boundaries of districts files such a resolution, or the town boards of a majority of the towns affected in the case of all other amendatory ordinances file such resolutions, the agency may not recommend approval of the petition without change, but may only recommend approval with change or recommend disapproval. s. 59.69(5)(e)3m A town may extend its time for disapproving any proposed amendment by 20 days if the town board adopts a resolution for the extension and files a certified copy of the resolution with the county clerks. 59.69(5)(e)6, Stats. When amendments go into effect. Section 59.692(2)(a), Stats. Shoreland zoning ordinances and amendments shall not require approval or be subject to disapproval by any town or town board.

¹⁴ ss. 62.11(3)(b), 62.23, 61.35 and. 60.62, Stats.

¹⁵ s. 59.69(5)(e)6, Stats.

¹⁶ ss. 59.692(2)(a) and 87.30, Stats.

¹⁷ s. 59.69(5)(d), Stats.

¹⁸ ss. 59.14, 61.50, 62.11(4), 985.07 & 985.01(1), Stats. A Class 1 notice requires 1 newspaper publication at least one week before the act or event.

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- ¹⁹ *Schmeling v. Phelps*, 212 Wis. 2d 898, 569 N.W. 2d 784 (Ct. App. 1997)
- ²⁰ *State ex rel. Skelly Oil Co. v. City of Delafield*, 58 Wis.2d 695 (1973)
- ²¹ *Kraemer & Sons v. Sauk Co. Adjustment Board*, 183 W (2d)1, 515 NW (2d) 256 (1994)
- ²² *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)
- ²³ *Dolan v. City of Tigard*, 114 S. Ct. 2309 (1994)
- ²⁴ See s. 66.0617 regarding procedures and limitations on levy of local development impact fees.
- ²⁵ Anderson, *American Law of Zoning*, 3d, Vol. 3, S. 21.32, pp. 754-5
- ²⁶ *Weber v. Town of Saukville*, 209 Wis. 2d 214 (1997)
- ²⁷ *League of Women Voters of Appleton v. Outagamie County*, 113 Wis. 2d 313 (1983)
- ²⁸ *Nova Services, Inc. v. Village of Saukville*, 211 Wis.2d 691 (Ct. App. 1997)
- ²⁹ s.19.59(1), Stats.
- ³⁰ s. 946.12, Stats.
- ³¹ s. 19.88(1), Stats.
- ³² s.19.35(1), Stats.
- ³³ ss. 19.81-19.98, Stats.
- ³⁴ OAG 86-76, 65 Op. Att'y Gen. 250 (1976) & s. 19.84(1) Stats.
- ³⁵ ss. 19.84(2) & 19.85(2), Stats.
- ³⁶ s. 985.02(2)(d), Stats.
- ³⁷ s. 19.85(1)(a), Stats.
- ³⁸ s. 19.85(1)(b), Stats.
- ³⁹ s. 19.85(1)(c), Stats.
- ⁴⁰ s. 19.85 (1)(f), Stats.
- ⁴¹ s.19.85(1)(g), Stats.
- ⁴² s. 19.85 (1)(h), Stats.
- ⁴³ s. 19.85(1)(e), Stats.
- ⁴⁴ ss. 19.85(1)(i) & 560.15, Stats.
- ⁴⁵ ss. 19.85(1)(ee, eg, em, i & j), Stats.
- ⁴⁶ s. 19.85(2), Stats.
- ⁴⁷ s. 66.1001(4)(d), Stats.
- ⁴⁸ County – s. 59.69(5), city – s. 62.23(7)(d), village – s. 61.35, town with village powers – 60.62(1), town without village powers– s. 60.61(4)(c), Stats.
- ⁴⁹ ss. 985.07 & 985.01(1), Stats.
- ⁵⁰ ss. 985.07 & 985.01(1), Stats.
- ⁵¹ s. 985.065(2)(a), Stats. concerns requirements for an official newspaper; s. 985.05(1), Stats. provides a posting option if there is no official newspaper; s. 985.02(2), Stats. provides guidelines for posting & s. 985.01(3), Stats. defines *municipality*.
- ⁵² s. 985.09, Stats.
- ⁵³ ss. 985.03 & 985.05, Stats.
- ⁵⁴ ss. 59.69(5)(e)5m, 62.23(7)(d)2 & 62.23(6)(am), Stats.
- ⁵⁵ ss. 59.694(6) & 62.23(7)(e)6, Stats.
- ⁵⁶ ss. NR 115.05(6)(h) & NR 116.20(2)(d) Wis. Adm. Code; DNR notification is usually accomplished by providing a written copy of the notice.
- ⁵⁷ ss. 91.77(3) & 91.75(5) Stats. Forms for notifying DATCP are available at 608-224-4648.
- ⁵⁸ s. 19.85 (2), Stats.
- ⁵⁹ s. 985.12, Stats.
- ⁶⁰ s. 985.02(2)(d), Stats.
- ⁶¹ s. 59.69(14), Stats. states a landowner, occupant or other person affected by a county zoning ordinance or amendment who claims statutory and ordinance procedures were not followed may appeal within 180 days after adoption of the ordinance or amendment if one notice was published and a public hearing was held and for an unlimited time if this was not done
- ⁶² ss.59.694(7) & 62.23(7)(e)7 Stats. and *League of Women Voters of Appleton Inc. v. Outagamie County*, 113 Wis. 2d 313, 334 N.W.2d 887 (1983)

⁶³ *Brookside Poultry Farms, Inc. v. Jefferson County Board of Adjustment*, 131 Wis. 2d 101, 388 N.W.2d 593 (1986)

⁶⁴ *Clark v. Waupaca County Board of Adjustment*, 186 Wis. 2d 300 (Ct. App. 1994)

⁶⁵ Wisconsin's Comprehensive Planning Law clearly identifies nine elements that need to be included in the comprehensive plan. These nine elements can provide an effective guide for discussing this question.

⁶⁶ ss. 60.22, 61.35 and 62.23(7), Stats.

⁶⁷ ch 236 Stats.

⁶⁸ s. 62.23 (6) via 61.35, Stats.

⁶⁹ s. 60.61(2)(e), Stats.

⁷⁰ s. 66.55, Stats.

